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SUPREME COURT OF THE UNITED STATES.

No. 223.

GEORGE LAW, Pl'ff in Error,

vs.

ALEXANDER CROSS.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

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UNITED STATES OF AMERICA.
Southern District of New York, ss.

I, Kenneth G. White, clerk of the Circuit Court of the United State of America for the Southern District of New York, in the Second Circuit, hereby certify that the writings annexed to this certificate are true copies of their respective originals, on file, and remaining of record in my office.

In testimony whereof I have caused the seal of the said court to be hereunto affixed, at the city of New York, in the Southern District of New York, in the Second Circuit, this sixth day of November, in the year of our Lord one thousand eight hundred and sixty, and of the independence of the said United States the eighty-fifth.

[SEAL.] KENNETH G. WHITE, Clerk.

United States of America, *ss.*

The President of the United States of America to the Judges of the Circuit Court of the United States, for the Southern District of New York, greeting:—

Because in the record and proceedings, as also in the rendition of the judgment of a plea, which is in the said Circuit Court before you, or some of you, between Alexander Cross and George Law, a manifest error hath appeared to the great damage of the said George Law, as is said, and as appears by his complaint. We being willing that such error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf do command you, if judgment be therein given, that then, under your seal, distinctly and openly you send the records and proceedings aforesaid, with all things concerning the same, to the Justices of the Supreme Court of the United States, at the Capital in the city of Washington, together with this writ, so that you have the same at the said place, before the justices aforesaid, on the first Monday of December next (1860), that the record and proceedings aforesaid being inspected, the said justices of the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the law and custom of the United States ought to be done.

Witness the Honorable Roger B. Taney, Chief Justice of the Supreme Court of the United States, this first Monday of December, in the year of our Lord one thousand eight hundred and fifty-nine, and of the independence of the United States the eighty-fourth.

[SEAL.] KENNETH G. WHITE,
Clerk Cir. Court U. S. for the Southern Dist. of N. Y.

"Endorsed:" Supreme Court of the U. S., George Law *vs.* Alexander Cross. Writ of Error.

S. D. LAW, 52 John St.,
Att'y for Pl'ff in error.

Sept. 15, 1860, allowed. S. NELSON.

Filed Sept. 15, 1860.

The return to the within writ of error, consisting of the writ of error, bond, citation, judgment record, and bill of exceptions.

KENNETH G. WHITE, Clerk.

Supreme Court of the United States.

GEORGE LAW, Plaintiff in error,
vs.
ALEXANDER CROSS, Def't in error.

Know all men by these presents that we, George Law, William H. Hays and James Murphy, all of the city of New York, are held and firmly bound unto the above named Alexander Cross, in the sum of forty thousand dollars, to be paid to the said Alexander Cross, his executor or administrator. To which payment well and truly to be made, we bind ourselves and each of us, jointly and severally, and our and each of our heirs, executors, administrators, firmly by these presents.

Sealed with our seals, and dated the fourteenth day of September, in the year one thousand eight hundred and sixty.

Whereas the above named George Law hath prosecuted a writ of error to the Supreme Court of the United States, to remove the judgment rendered in the hereinbefore entitled suit, by the Circuit Court of the United States for the Second Circuit and Southern District of New York, in favor of the above named defendant in error against the above named plaintiff in error.

Now, therefore, the condition of this obligation is such, that if the above named George Law shall prosecute his said writ of error to effect, and recover all damages and costs if he shall fail to make good his plea, then this obligation shall be void, otherwise the same shall and remain in full force and virtue.

GEORGE LAW, [L. S.]
W. H. HAYS, [L. S.]
JAMES MURPHY. [L. S.]

Sealed and delivered by William H. Hays and James Murphy in presence of—

JOHN H. HUNT.

City and County of New York, *ss.*

On this 14 day of Sept., 1860, before me personally came George Law, William H. Hays, and James Murphy, known to me to be in-

dividuals described in and who executed the above bond, and they each for himself acknowledged they executed the same.

J. WILSON GREEN, Notary Public.

City and County of New York, *ss.*

William H. Hays and James Murphy being duly sworn, each for himself severally says, that he is a resident and freeholder within the State of New York, and is worth the sum of forty thousand dollars over and above all his debts and responsibilities he owes or has incurred.

W. H. HAYS,
JAMES MURPHY.

Severally sworn before me this 14 day of September, 1860.

J. WILSON GREEN, Notary Public.

"Endorsed:" Supreme Court of the United States.

GEORGE LAW, Pl'ff in error,
vs.
ALEXANDER CROSS, Def't in error.
} Bond on writ of Error.

I hereby approve of the within bond, as to its form and the sufficiency of the security.

Sept. 15, 1860. S. NELSON.

Filed Sept. 15, 1860.

By the Honorable Samuel Nelson, one of the Judges of the Circuit Court of the United States for the Southern District of New York, in the Second Circuit, to Alexander Cross.

Whereas, George Law has lately issued out of the Supreme Court of the United States, a writ of error, directed to the judge of the Circuit Court of the United States for the Southern District of New York, stating, that in the record and proceedings, as also in the rendition of the judgment of a plea in the said court before the judge thereof, between yourself, the said Alexander Cross, and the said George Law, a manifest error hath happened, to the great damage of the said George Law:

And whereas, for the correction of that error in due manner, the said writ has been issued, returnable at the next stated term of the Supreme Court of the United States, at the capitol in the city of Washington, on the first Monday of December next; you are, therefore, hereby cited to appear before the said Supreme Court, at the city of Washington, on the said first Monday of Dec'r next, to do and receive what may appertain to justice to be done in the premises.

Given under my hand at the city of New York, in the Southern District of New York, in the Second Circuit, the 15th day of Sep-

tember, in the year of our Lord one thousand eight hundred and sixty, and of the independence of the United States the eighty-fifth.

S. NELSON.

Due service of a copy of the above citation is hereby admitted.
New York, Sept. 17, 1860. D. D. LORD, Att'y of Plff.

Endorsed: U. S. Sup. Court.

GEORGE LAW
vs.
ALEXANDER CROSS. } Citation.

S. D. LAW, Att'y for Pl'ff in Error.

Filed Sept. 18, 1860.

Circuit Court of the United States for the Southern District of New York.

As yet of the stated term of October, in the year of our Lord one thousand eight hundred and fifty-one.

Southern District of New York, *ss.*

Be it remembered that in this same term, before the Honorable Samuel Nelson, Associate Justice of the United States, and Samuel R. Betts, District Judge for the Southern District of New York, in the Circuit Court of the United States for the Southern District of New York, came Alexander Cross, an alien subject of the Queen of the United Kingdom of Great Britain and Ireland, by Daniel D. Lord, his attorney, and brought into the said court, before the said judges thereof, his bill against George Law, a citizen of the State of New York, being in the custody, &c., which said bill is in the words following, namely :—

Southern District of New York, *ss.*

Alexander Cross, an alien, and subject of her majesty the Queen of the United Kingdom of Great Britain and Ireland, plaintiff in this suit, by Daniel D. Lord, his attorney, complains of George Law, a citizen of the State of New York, defendant, being in the custody, &c., of a plea of trespass upon the case, upon certain promises and complaints of the said defendant, for that whereas, heretofore, to wit, on the first day of July, in the year of our Lord one thousand eight hundred and fifty-one, at the city of New York, in the county of New York, the defendant was indebted to the plaintiff in the sum of thirty thousand dollars, for so much money by the plaintiff before that time lent and advanced to the defendant, and at his special instance and request, and also for so much other money before that time paid, laid out, and expended, for the said defendant, and at his like instance and request, and also for goods, wares, and merchandise, of great value, to wit, of the value of thirty thousand dollars, before that time sold and delivered to the defendant, and at his like instance

and request, and also in the further sum of thirty thousand dollars for the work and labor, care, diligence, and attendance of the plaintiff, his servants and agents, in and about the affairs of the defendant, and at his like instance and request, and in the further sum of thirty thousand dollars for the commissions and rewards, which the plaintiff deserved to have for the care, diligence, and attendance of the plaintiff and his agents as agents of the defendant, in the purchase, shipment, and payment for certain cargoes of coal by the plaintiff and his agents purchased for the defendant and at his like request:

And whereas, also, the plaintiff and defendant heretofore on the day and year and the place last aforesaid, accounted together touching various sums of money, claims, and demands before that time and then owing by the defendant to the plaintiff and then in arrear and unpaid, on which accounting the defendant was found to be indebted and in arrear unto the plaintiff in the further sum of thirty thousand dollars, lawful money of the United States:

And being so indebted as aforesaid, the defendant afterwards, to wit, on the day, year, and place last aforesaid, in consideration thereof undertook, and then and there faithfully promised the plaintiff to pay him the several sums of money above mentioned whenever he should be thereunto afterwards requested. Yet the defendant, although afterwards requested, to wit, on the day and year and at the place last aforesaid, hath not paid the said sums or any of them or any part thereof, but so to do hath always neglected and refused, to the plaintiff's damage thirty thousand dollars, and thereof he brings suit, &c.

D. D. LORD, Att'y for Pl'ff.
D. LORD, of Counsel.

And the said defendant, George Law, by Calvin E. Mather, his attorney, comes and defends the wrong and injury when, &c., and saith that he did not undertake or promise in manner and form as the said plaintiff hath above thereof complained against him, and of this he puts himself upon the country, &c.

CALVIN E. MATHER, Att'y for Def't.

And with the said plea gave the following notice:—

Sir: Take notice, that the above named defendant on the trial of this cause will give in evidence, and insist that the above named plaintiff before and at the time of the commencement of this suit, was and still is indebted to the said defendant in the sum of thirty thousand dollars for so much money lent, advanced, and paid to, laid out and expended for the said plaintiff, and at the special instance and request of the said plaintiff. And in the like sum of thirty thousand dollars for the work, labor, care, and diligence of the said defendant, his agents and servants, by them bestowed upon, in, and about the business of the said plaintiff, and at his special instance and request.

And the said defendant will set off and allow to the said plaintiff on

the said trial, so much of the said sum of thirty thousand dollars so due and owing from the said plaintiff to the said defendant, against any demands of the said plaintiff, to be proved on the said trial, as will be sufficient to establish and discharge such demand, according to the form of the statute in such case made and provided.

You will also take notice, that the defendant on the trial of this cause will further give in evidence and insist that he has paid said plaintiff large sums of money, in all amounting to thirty thousand dollars, for property by said plaintiff purchased for and delivered to said defendant, and for the cost and expenses, commissions and advances on account of such purchase and delivery, which sums so paid the said defendant will claim to have allowed upon any demand which the plaintiff may establish for such purchase and delivery, and such costs, expenses, commissions, and advances to the amount thereof.

Respectfully, yours,

CALVIN E. MATHER, 39 Wall St., N. Y.,

Attorney for George Law.

To D. D. LORD, Pl'ff's Att'y.

And thereupon let a jury thereupon come before the said judges in the same court, at the city of New York, at the next stated term thereof on the first Monday of April next, twelve, &c., each of whom, &c., by whom, &c., and who neither, &c., because as well, &c.

And the same day is given to the parties aforesaid there.

At which day and place last aforesaid came the parties aforesaid, before the said Judges, but the Marshal hath not sent hither the writ to him in this behalf directed, nor hath he done anything thereupon.

And the process aforesaid, between the parties aforesaid, of the plea aforesaid, is duly continued until this twentieth day of April, of the stated term of April, in the year of our Lord one thousand eight hundred and fifty-seven, before the judges aforesaid, in the said court at the city of New York; at which day and place aforesaid, in the court aforesaid, before the Honorable Samuel Nelson holding the said court, came the parties aforesaid, namely, the plaintiff by his attorney aforesaid, and the said defendant by R. Christie, Jr., his attorney in this behalf, duly substituted as the attorney of the defendant in place of the said Calvin E. Mather. And the jurors of the jury in this behalf duly summoned also come, and to say the truth on the said issue joined as aforesaid, are duly elected, tried and sworn, and the jurors of the jury say on their oaths, that the defendant did undertake and promise in manner and form as the plaintiff hath declared against him; and they assess the damages of the said plaintiff, by reason of the non-performance of those promises, at fifteen thousand nine hundred and thirty-three dollars and seventy-nine cents over and above his costs and charges, and for those costs and charges six cents.

And because the court will advise as to the judgment in this behalf, day is given to the parties aforesaid, before the said judges in the

same court, until the Monday of October next, at the next stated term of the said court.

At which day and place come the parties aforesaid, and the process is continued between the parties aforesaid of the plea aforesaid, until the stated term of the said court held on the first Monday of April, in the year one thousand eight hundred and sixty, at the city of New York, in the said Southern District.

And hereupon the said court, having advised themselves in the premises, and as to certain exceptions on behalf of the defendant on the trial of the said issue, which are annexed—It is now considered by the said court now here, that the plaintiff recover against the said defendant the damages aforesaid by the jury assessed, and his costs and charges so assessed, and the further sum of four thousand one hundred and eighteen $\frac{16}{100}$ dollars, by the court now here adjudged of increase for the costs and charges of the plaintiff, by him about his suit in this behalf expended, and with his assent, which damages, costs and charges in the whole amount to twenty thousand and fifty-one dollars and ninety-five cents.

And the defendant, in mercy, &c.

Judgment signed this 13th day of September, 1860.

KENNETH G. WHITE, Clerk.

Endorsed: U. S. Circuit Court, South'n Dist. of N. Y. Alexander Cross *v.* George Law. Judgment Record. D. D. Lord for plff. Filed Sept. 13, 1860.

Southern District of New York, *ss.*

Be it remembered, that afterwards, at a Circuit Court held at the city of New York, in and for the Southern District of New York, on the first Monday of April, 1857, before the Hon. Samuel Nelson, one of the Justices of the Supreme Court of the United States appointed to hold said Circuit, the aforesaid issue so joined between the said parties as aforesaid came on to be tried by a jury of the said district for that purpose duly empanelled, good and lawful men of the said district; at which day and place also came there as well the said Alexander Cross as the said George Law, by their respective attorneys aforesaid.

And the jurors of the jury aforesaid duly empanelled to try the said issue being called, also come, and were then and there in due manner chosen and sworn to try the same issue.

The plaintiff, to maintain the issues on his part, gave in evidence and read to the jury a letter written by the defendant to the plaintiff, of which the following is a copy:—

New York, January 12, 1850.

Alexander Cross, Esq.

Sir—Herewith I hand you four thousand dollars, which I desire you to take to Valparaiso, and purchase from two hundred and fifty to three hundred tons of coal, and see that it is put on board of the

steamship "Isthmus," with as little delay as possible, when she arrives, which will probably be between the 20th of February and the 1st of March.

I also desire you to take passengers from Valparaiso to Panama at the usual rates of passage for steamers; you may also take thirty passengers for California. These passengers must find themselves while the steamer stops at Panama. For these passengers you will also charge the usual rates of passage in the cabin from Valparaiso to Panama, and from Panama to San Francisco. Mr. Oliver Charlick, formerly of this city, is agent at Panama for the steamship "Isthmus," and agent for the line of steamers from New York to New Orleans and to Chagres. I have directed him to purchase coals at Panama. If, at any time, he shall give you an order to purchase coal for the steamers, and desire it sent to any place on the Pacific coast, you can fill his order, and draw on me at thirty days' sight for the amount. Any money you may have for me at Valparaiso for passengers in the steamer, after paying disbursements, you can send to Mr. Charlick at Panama. I will consign the "Isthmus" to your house at San Francisco. You will please advise them to purchase 250 to 300 tons of coal for her use by the time she arrives there, which will be about the first of April.

Very respectfully yours,
GEORGE LAW.

P. S.—I will hand you a letter which you will please hand Capt. Wood, of the steamer "Isthmus," when he arrives at Valparaiso. Capt. Wood's instructions are to call at the office of the British Mail Steam Line at Valparaiso for instructions. You will please leave word there for him to call on you for my letter.

The plaintiff also read in evidence another letter written by said defendant to the plaintiff, of which the following is a copy:—

New York, March 12th, 1850.

Alexander Cross, Esq.

Dear Sir—Yours of the 8th February, from Panama, is received. The box of doubloons shipped on board the "Ohio," from New York, and on board of the "Falcon" from Havana to Chagres, to pay for coals for the steamship "Isthmus" at Valparaiso, was returned by the "Falcon" to me in New York. You can draw on me here for any coal that may be received by the steamship "Isthmus" at Valparaiso. The steamship "Columbus" left here the 11th February, and will be at Valparaiso on or about the 10th April. M. O. Roberts informs me that he has written to you to purchase about 300 tons good coal by the time she arrives. You will purchase this coal for the "Columbus," and have it ready by the 10th April, and draw either on me or Mr. Roberts for the amount. The steamship "Republic" will leave here on the 25th March, and arrive at Valparaiso about the 25th of May. You will purchase for the "Republic" 450 tons of best coal, and have it ready at Valparaiso by the 25th May.

The steamship "Antelope" will leave here on the first of April, and arrive at Valparaiso about the first June. You will purchase for her at Valparaiso 350 tons best coal and have it ready by the first of June. You will please draw on me for this coal. When these ships arrive there, you will see that these coals are put on board and that they are cleared as soon as possible, as these four ships are intended to form the line from Panama to San Francisco, and I am anxious to get the line in operation, twice per month from Panama to San Francisco, by the first of June. I also want you to purchase about one thousand tons of coal afloat and send it to Panama, provided you can do so. If you cannot get it afloat, then you must purchase about 500 tons in the next best way you can, and send it forward as soon as possible, and the other 500 tons as soon as you can get it afloat, always bearing in mind to purchase the best coal. You should get about 30 to 40 lay days at Panama for unloading the vessel without demurrage; this will probably enable the steamers to come alongside and receive the coals from the ships without extra expense; this coal to be paid for at Panama, as soon as received from the ships that bring it. You will consign it to Henry Tracy, at Panama, who is authorized to pay for it.

You will please advise me, on receipt of this, as to the quantity of coal at Valparaiso, and about the price there, and the cost of sending coal to Panama, and the time it will take. I have a large amount of coal on the way round Cape Horn. This that I want, is for immediate use, in case the vessels on the voyage round Cape Horn are delayed. I ordered two thousand tons from Cross, Wedderspoon & Co., of Glasgow, to try the price from there. This is in addition to the amount I have sent from here.

Very respectfully yours,
GEORGE LAW.

The plaintiff also read in evidence another letter from said defendant to said plaintiff, of which the following is a copy:—

(Per Georgia.) New York, April 13th, 1850.

Alexander Cross, Esq.

Dear Sir—I wrote you on the 1st March, desiring you to engage 450 tons of coal for the steamship "Republic," before she arrives there; also, 350 tons of coal for the steamship "Antelope," and to send 1000 tons of coal to Panama, authorizing you to draw on me here for the coals thus ordered. You will please execute these orders, as it is important to my arrangement for the steamers. The coals you send to Panama, there should be thirty or forty lay days for the vessels without charge of demurrage, as this time would probably enable the steamers to come alongside and take the coal from the ships that bring it. The coals you send to Panama can be paid for there, when the coal arrives, if you prefer it, only let my agents there, Messrs. Tracy & Charlick, know in time so that they will be

in funds. The steamship "Republic" leaves here to-day at 12 o'clock, and will probably be at Valparaiso by the 8th of June. The "Antelope" will arrive about the 25th of June. You can sell thirty cabin tickets for each of these ships to San Francisco, for $450 each; you may sell as many of the cabin and steerage passages to Panama as you can, at about $10 each below the price charged in the English steamers. The "Republic" is a very fine new ship, double engines, commenced running here last October, has fine accommodation, and is the best ship in the Pacific. The "Antelope" is a little smaller ship than the "Republic," and is very fast—is one year old. Very respectfully yours,

GEORGE LAW.

The plaintiff also read in evidence another letter from said defendant to said plaintiff, of which the following is a copy:—

(Per Republic.) New York, April 13th, 1850.

Alexander Cross:

Dear Sir—This will be handed to you by Captain Hudson, of the steamer "Republic," which vessel is consigned to you; while at Valparaiso, you will please give Captain Hudson all the facilities that are necessary, in order to dispatch the ship on her voyage with as little delay as possible. Captain Hudson is authorized to draw bills on me in payment for any supplies or expenses required for the ship. The steamer "Antelope" will be at Valparaiso about three weeks after the "Republic." The "Antelope" will be consigned to you at Valparaiso. She will require 350 tons of coal, which you will please provide for her, and draw on me for the amount. Get the best quality of Welsh coal if you can. If Welsh coals are scarce, or too high in price, then get the next best coal that you can. Always require the gross ton of 2240 lbs. I shall be on the Pacific about the 20th of July. Very respectfully yours,

GEORGE LAW.

The plaintiff further read in evidence a letter from the defendant to the plaintiff, as follows:—

(Via Panama.) San Francisco, April 26th, 1850.

George Law, Esq., New York.

Dear Sir—We enclose duplicate duplicate of our last respects of 19th inst., and are still without hearing from you. We daily expect the arrival of the "Isthmus" from Panama, where she was reported to be on the 1st inst., with the "Sarah Sands" and "Gold Hunter," all bound here.

We have about 220 tons of coal ready for her at any moment, which will probably be the means of dispatching her before the Sarah Sands, as the agents of the latter, we are told, want coal, of

which there is none now for sale, and first arrival will bring $40 per ton.

In absence of letters to reply to,

We remain, dear Sir, yours truly, &c.

CROSS, HOBSON & CO.

There is yet a considerable sum to your debit for purchasing coal, which we await the arrival of the "Isthmus" at present to reimburse ourselves for.

C. H. & CO.

The plaintiff also read in evidence another letter from said defendant to the said plaintiff, of which the following is a copy:—

(Per steamer Ohio.) New York, May 28th, 1850.

Alexander Cross, Esq.

Dear Sir—Yours of the 23d of April, with duplicate of 29th March, was received on the 24th instant, per steamer "Ohio." I wrote you on the 12th March, 13th April, and 26th April, all of which you have, I trust, received. The steamer "Antelope" left here on the 18th instant. She is consigned to you, and will probably arrive at Valparaiso about the 18th of July at furthest. You can take cabin passengers from there to San Francisco, at $400 (four hundred dollars) each, say not exceeding thirty in number. You can take as many passengers as offer for Panama. I have directed the captain to call at Callao, and fill up with coals and stores, if he thinks best, as it will be cheaper there than at Panama. He is authorized to draw on me for what the ship requires beyond the funds that she may have. The "Antelope" will take 350 tons of coal at Valparaiso, of the best quality. Welsh coal is the best English coal. You will give her all the dispatch possible. It may be best to purchase some of her supplies there, such as beef, pork, hams, sugar, and such articles as can be purchased better there than at Panama. This you will know best. I want you to purchase me two cargoes of coal afloat and send it to San Francisco as soon as possible. Consign it to your house there for me. You can draw on me for the price of the coal at Valparaiso, and the balance payable at San Francisco on delivery there. Get as many lay days as you can at San Francisco in order that I may use it on board of the steamers and save the cost of landing it. Advise Mr. Henry Tracy, my agent at Panama, as soon as this coal is shipped, in order that he may advise Mr. Oliver Charlick, my general agent, who has charge of running the steamers on the Pacific.

Very respectfully yours,

GEORGE LAW.

The plaintiff also read in evidence the testimony of witnesses examined at Valparaiso, South America, upon commission issued in this cause, on the 14th of March, 1853, to wit, of Walter Jodrell

Williams, who, to the following direct interrogatories put to him, by and on the part of the plaintiff, answered as follows:—

First interrogatory. What is your age, residence, and occupation? What was it between 1st March and 1st November, 1850?

To the First Interrogatory, he saith that he is twenty-seven years of age; that he resides at Valparaiso; that he is by occupation a clerk, and that his residence and occupation between the first of March and first of November, in the year eighteen hundred and fifty, was the same as he now declareth it to be at the present time.

Second interrogatory. Do you know of a purchase of coal in the vessels the "Lady Lilford" and "Duncan"? How much coal was purchased from each of said vessels? When and where were such cargoes purchased respectively? By whom were such cargoes paid for? When were they paid for? For whose account and at whose request were such lots of coal bought? Was such request verbal or by letter? If by letter, give the date or dates thereof. To what place were two such lots sent, and in what vessels were they sent? Was the lot in the "Duncan" sent on in her or transhipped into other vessels? If transhipped, give the name of the vessel into which such lot was transhipped and how much was sent by each vessel, and when they sailed from Valparaiso respectively.

To the second interrogatory he saith: Yes; that from the "Lady Lilford" there were purchased five hundred tons of coal, and from the "Duncan" four hundred and forty tons; that the cargoes of both vessels were purchased in Valparaiso, in the month of July, eighteen hundred and fifty; that they were paid for by Messrs. Cross, Hobson & Co., in Valparaiso, for account and at the request of Mr. George Law, by letters dated in New York, March twelfth and May twenty-eighth, eighteen hundred and fifty; that both lots were sent to San Francisco; the "Lady Lilford" going direct with her cargo; that the cargo of the "Duncan" was transshipped, part into the "Carlos Quinto" and part in the "Amalia;" the "Carlos Quinto" taking about four hundred tons and "Amalia" the remainder; that the "Carlos Quinto" sailed from Valparaiso to San Francisco direct, about the eleventh of September, eighteen hundred and fifty, and the "Amalia" for Coquimbo, about the twenty-sixth of September, eighteen hundred and fifty.

Third Interrogatory. Look at the papers hereunto annexed, marked Exhibits No. 3 and 4, and purporting to be charter-parties of the vessels named "Charles V." and "Amalia," and state whether you are a subscribing witness to them or either of them, and if yea, then specify to which you are witness; was such charter-party executed in your presence by any of the parties thereunto? If yea, then state by which of the parties it was so executed. What was the freight agreed to be given to the "Charles V." and "Amalia?" How did such rates compare with the current rates at Valparaiso at the time of chartering said vessels respectively?

To the third interrogatory he saith: he knoweth not, not having been witness to the execution of said charter-party.

Fourth Interrogatory. Do you know of the purchase of coal at Coquimbo about the month of July, 1850, by Alexander Cross, or Cross, Hobson & Co.? What was the quantity, character and quality, and price of such lot? Were any other lots of this sort and quality for sale at this time at Valparaiso, or Coquimbo? If any such lots were for sale, could they at this time, when this lot was purchased, be bought for less price? Who paid for such lot of coal? When was it paid for? On whose account was such coal purchased? Were the directions to purchase verbal or by letter? If by letter, give the date or dates thereof. Was such coal kept at Coquimbo after the purchase thereof? If yea, state how long thereafter it was so kept. Was it shipped from Coquimbo? If yea, in what vessel? How far is Coquimbo from Valparaiso as to distance and time of travel? In what direction is it from Valparaiso? How does its harbor compare as to safety and general advantages with that of Valparaiso? How is it as to the course of a voyage around Cape Horn to Panama or San Francisco? When did the "Amalia" arrive at Coquimbo? Did she sail for any port with the same? If so, what port and when? Was E. H. Ackley agent, or did he then act as agent for any person and for whom? Did he give any direction as to this lot of coal at Coquimbo? Were such directions oral or written? If written, produce the same and annex them to your deposition. If you refuse to do this, state why you refuse and annex a copy, and say whether the same is a true copy. Was said lot of coals at Coquimbo purchased for any particular steamer? If yea, give her name. Was it used for such steamer? If not, why was it not? What coal was bought for said steamer and by whose direction, and at what price was it bought?

To the fourth interrogatory he saith: Yes; that the quantity of coals purchased was two hundred and ninety-eight and a half tons; that, with regard to character and quality, he knoweth not; that the price per ton was eleven dollars and fifty cents at Coquimbo; whether any other lot or lots of this sort and quality for sale at Coquimbo or Valparaiso, or if such lot or lots existed, could they be bought for a less price, he saith he knoweth not; that such lot of coal was paid for by Messrs. Cross, Hobson & Co.; that it was paid for on the sixth day of November, eighteen hundred and fifty, on account and at the request of Mr. George Law, said request being made to Messrs. Cross, Hobson & Co., by letter dated New York, thirteenth April, eighteen hundred and fifty, and that said lot of coal was kept in Coquimbo after the purchase; for how long thereafter deponent saith not; that the coal was shipped at Coquimbo on board the "Amalia;" that Coquimbo is distant from Valparaiso about twenty-four hours' sail by steamer, and lies in a northerly direction; as to its safety and general advantages, in comparison with the harbor of Valparaiso, deponent saith not, but that it is as easily made as

Valparaiso; when the "Amalia" arrived at Coquimbo, deponent knoweth not, but that she did sail for a port with said coal, and that port was San Francisco, in the month of October, eighteen hundred and fifty; that E. H. Ackley acted as agent for Mr. George Law, and gave directions about said coal on his account; that such directions were by letter, and that the annexed letter, dated Valparaiso, August thirteenth, eighteen hundred and fifty, is the original letter received from said E. H. Ackley; that this lot of coal was bought for the steamer "Antelope," but not used by her; that the reason why said coal was not used by the steamer "Antelope" was, because Captain Ackley did not consider it advisable; that coal was purchased for said steamer in the Bay of Valparaiso, by order of Captain Ackley, and that the price of such lot of coal as included in account of disbursements of steamer "Antelope," and the parties from whom said coal was bought, is as follows: From Jno. Thomson, Watson & Co., ex "Margaret," 292 tons 15 cwts., @ $14, $4088 72; and from Huth, Grunning & Co., ex "Chas. Jones," for 280, being as by vouchers taken by Captain Ackley.

Fifth interrogatory. Was the lot of coals bought from the "Duncan" taken in her to San Francisco? Would the master of her consent to go to San Francisco on any terms, or on any terms as favorable as those offered by the "Charles V." and "Duncan?" State fully the reasons for such transhipments.

To the fifth interrogatory he saith: That the coals bought from the "Duncan" were not taken on in her to San Francisco; that the master would not consent to go on any terms, as he had to load cargo and return home on owner's account.

Sixth interrogatory. What was the state of the coal market at Valparaiso, and what were the prices of coal then of the same sort and quality as the lot at Coquimbo, from 1st July, 1850, to 1st November, 1850? Give the times within this period when the prices rose or fell, and the degrees to which they rose and fell, and the state of the market as to quantities for sale at such times, and all other information within your knowledge as to the matters herein above inquired of. What were the usual rates of commission at Valparaiso and Coquimbo on purchase of coal and the business connected therewith? State fully.

To the sixth interrogatory he saith: That with regard to the state of the coal market, between the 1st of July and the 1st of November, eighteen hundred and fifty, or the degrees to which the price of coal rose and fell, or quantity for sale within this period, he knoweth not; that the usual rates of commission at Valparaiso or Coquimbo at this period, for the purchase of coal, and the business connected therewith, was five per cent. for purchasing without funds, and five per cent. for procuring tonnage.

Seventh interrogatory. What was the character and quality of coals bought at Coquimbo, and also, of the cargoes of the "Lady Lilford" and "Duncan?" How did these different lots compare

with each other? How did such lots compare with other lots at Coquimbo and Valparaiso at the times respectively when they were purchased?

To the seventh interrogatory, he saith he knoweth not.

Eighth Interrogatory. Do you know of the transmission of any letters from Alexander Cross, or Cross & Co., or Cross, Hobson & Co., to George Law or any of his agents—especially letters of the following dates: 1850—June 5, June 24, June 30, July 1 (2 letters), July 29, August 8, August 27? If yea, how were all the letters to Law or his agents, whether above enumerated or not, sent to him? Answer respectively as to all; annex copies of such letters to your deposition, and state if the same are true copies.

To the eighth interrogatory he saith: Yes; that he is aware of the transmission of letters to Mr. George Law, by Messrs. Cross, Hobson & Co.; that he is aware of letters bearing date as follows: June 5th, 1850; June 10th, 1850; June 30th, 1850; July 1st, 1850 (two letters, one from Captain Hudson, steamer "Republic"); July 29th, 1850; August 8th, 1850; August 27th, 1850; that said letters were all forwarded by himself, under cover, to the agents of Messrs. Cross, Hobson & Co., at Panama, Messrs. Smith & Lewis, and that the copies annexed herewith are true and faithful copies of originals.

Last interrogatory. Do you know any other matter or thing of benefit or advantage to the plaintiff herein? If yea, state the same fully, as if particularly interrogated thereunto.

To the last interrogatory he saith: That he is not aware of any other matter or thing of benefit to the parties herein.

The defendant then read in evidence the several cross-interrogatories put to the said W. Jodrell Williams on said examination under said commission, which cross-interrogatories and answers are as follows:—

First cross-interrogatory. If, in answer to the second interrogatory, you state that the coal mentioned in said interrogatory, or any part thereof, was bought at the request of the defendant or any agent of his, state fully the facts upon which you so state; state how you know it.

If you state that it was purchased at the request of any agent of the defendant, in addition to the above, state how you know he was such agent, and what was the character of such agency, and how you know that.

To the first cross-interrogatory he saith: That the deposition made by him in reply to the second general interrogatory has been given in the sight of the respective bills of parcels for coals purchased ex "Lady Lilford" and "Duncan," and the proof of payment for the same by the existing cancelment of bonds by Messrs. Cross, Hobson & Co., in Valparaiso; and that it was so bought at the request of the defendant the letters quoted fully confirm; and that said cargoes of coal went forward to San Francisco as stated, he

proves from the entries of respective invoices and bills of lading, made by himself, as bookkeeper in the employment of Messrs. Cross, Hobson & Co.; and the date of the sailing of "Carlos Quinto" and "Amalia," with their destiny, is easily traced on application to the note of departures kept at the public exchange rooms of this city.

Second cross-interrogatory. If, in answer to the fourth interrogatory, you answer that you do know of the purchase of coal at Coquimbo about the month of July, 1850, by Alexander Cross, or Cross, Hobson & Co., state which the purchase was made by, and who composed the firm of Cross, Hobson & Co., and how you know of such purchase.

To the second cross-interrogatory he saith: That his deposition in answer to the fourth general interrogatory, he also maketh upon proof of cancelled bills of parcels for the coal at the price of eleven and a half dollars per ton; that he has knowledge, from the entries in the books themselves, of payment being made as stated by Cross, Hobson & Co.; that they were bought for account and at the request of George Law, his letters dated New York, April thirteenth, eighteen hundred and fifty, fully corroborate; he is aware of said coal being forwarded from Coquimbo per "Amalia," which is sufficiently proved by bills of lading and invoices; that she sailed from thence for San Francisco is now confirmed by her due arrival there in fulfilment of charter-party. With respect to the position of Coquimbo, as regards the port of Valparaiso, the semi-monthly communication by the Pacific Steam Navigation Companies' steamers fully proves; that Capt. E. H. Ackley acted as Mr. Law's agent, so far as was admitted, seems clear from the tenor of Mr. Law's correspondence, and also from said E. H. Ackley's letter to Cross, Hobson & Co., dated Valparaiso, August thirtieth, eighteen hundred and fifty, when commanding the steamer "Antelope," and same letter gives Captain Ackley's reason for not proceeding in said steamer to Coquimbo, to take up this lot of coal there provided for him. The coal put on board of said steamboat "Antelope," here in Valparaiso, is clear, from deponent's statement.

Third Cross-Interrogatory. If you state that the coal mentioned in the fourth interrogatory, as purchased at Coquimbo, was purchased by direction of the defendant, or by any agent of his or him, state how you know the fact; and if purchased by direction of his agent, state how you know he was such agent, and the nature of such agency, and how you know both.

To the third cross-interrogatory he saith, that he has been in the several employment as the head clerk of Messrs. Cross, Hobson & Co., from April, eighteen hundred and forty-nine, till the conclusion of that partnership, and is now occupying the same position in the present firm of Cross & Co.

The plaintiff hereupon offered to read in evidence the letter of Capt. E. H. Ackley, referred to in the answer of Walter J. Williams to the fourth interrogatory, above written, to which reading of said

letter in evidence defendant objected, that the authority of said Captain E. H. Ackley to give the orders and directions therein contained, had not been proved.

The court overruled the objection, to which decision the defendant excepted; the plaintiff thereupon read the said letter, of which the following is a copy:—

Valparaiso, 30th August, 1850.

Messrs. Cross, Hobson & Co.

Gentlemen: The "Antelope," under my command, which arrived last evening, required sheathing over her deck to prevent leak, and which could not be done at Rio, as I intended, therefore cannot be done anywhere north of this port, and, according to the master's and carpenter's report, will occupy four or five days, and during this time we could be taking on board coals, and get along under a week in all. Did we go to Coquimbo, we should be of course five days longer in reaching Panama. Our detention has been, so far, forty days more than anticipated, therefore I think you will do the owners a service, and help to relieve their minds, to purchase coal here afloat, as the weather has become fine and the detention suffered by the "Republic" is not likely to occur.

Even at the high price of fourteen dollars asked for the "Margaret's" cargo, which is of good quality of Scotch coal, and I think the difference will be made up in saving of time and getting into our proper place in the line. The surplus coal of this cargo, along with the lot provided for us at Coquimbo, you will do well to send on to San Francisco, as the two cargoes sent, I am persuaded, are smaller than intended by Mr. Law. In his name, I therefore beg to authorize your proceedings, should you agree with me in their propriety.

I am, gentlemen,
Your obedient servant,
E. H. ACKLEY, Commander.

P. S.—I arrived at Chiloe after a tedious passage, short of fuel, and took on board a quantity of wood, potatoes, &c., for which I gave an order on you for $720 4½, which please place to the account of steamer "Antelope." I have since been to Valdivia.

Yours, &c., E. H. A.

The plaintiff then read in evidence the testimony of T. James Harker, one of the witnesses examined at Valparaiso, South America, upon commission issued as above set forth, who, to the following several direct interrogatories put to him by and on the part of the plaintiff, answered as follows:

First Interrogatory. What is your age, residence, and occupation? What was it between first March and first November, 1850?

To the first interrogatory, he saith, that he is thirty-five years of age; that he resides in Valparaiso, and that he is by occupation a merchant, and that by residence and occupation, between the first of

March and first of November, in the year eighteen hundred and fifty, was the same as he now declareth it to be at the present time.

Second Interrogatory. Do you know of a purchase of coal in the vessels the "Lady Lilford" and "Duncan?" How much coal was purchased from each of said vessels? When and where were such cargoes purchased respectively? By whom were such cargoes paid for? When were they paid for? For whose account and at whose request were such lots of coal bought? Was such request verbal or by letter? If by letter, give the date or dates thereof. To what place were such two lots sent and in what vessels were they sent? Was the lot in the "Duncan" sent on in her or transhipped into other vessels? If transhipped, give the name of the vessels into which such lot was transhipped, and how much was sent by each vessel, and when they sailed from Valparaiso, respectively.

To the said second interrogatory he saith Yes; that from the "Duncan" there were purchased four hundred and forty tons of coal; that from the "Lady Lilford" he saith he knoweth not; that the coals from the "Duncan" were purchased in Valparaiso, on the twenty-sixth day of July, eighteen hundred and fifty, and that they were paid for by Messrs. Cross, Hobson & Co., in Valparaiso; that for whose account or by whose request such lot of coals were purchased, whether verbally or by letter, or to what place or by what vessel such coals were sent, deponent saith he knoweth not: that the coal from the "Duncan" was transhipped on board of vessel or vessels, or what quantity, or when said vessel or vessels sailed from Valparaiso, deponent saith not.

Third Interrogatory. Look at the papers hereto annexed marked Exhibits Nos. 3 and 4, and purporting to be charter-parties of the vessels named "Charles V." and "Amalia," and state whether you are a subscribing witness to them or either of them, and if yea, then specify to which you are witness; was such charter-party executed in your presence by any of the parties thereunto? If yea, then state by which of the parties it was so executed.

What was the freight agreed to be given to the "Charles V." and "Amalia?" How did such rates compare with the current rates at Valparaiso at the times of chartering said vessels respectively?

To the third interrogatory he saith he knoweth not.

Fourth Interrogatory. Do you know of a purchase of coal at Coquimbo about the month of July, 1850, by Alexander Cross, or Cross, Hobson & Co.? What was the quantity, character, and quality, and price of such lot? Were any other lots of this sort and quality for sale at this time at Valparaiso or Coquimbo? If any such lots were for sale, could they at the time when this lot was purchased be bought for less price? Who paid for such lot of coal? When was it paid for? On whose account was such coal purchased? Were the directions to purchase verbal or by letter? If by letter, give the date or dates thereof. Was such coal kept at Coquimbo after the purchase thereof? If yea, state how long there-

after it was so kept. Was it shipped from Coquimbo? If yea, in what vessel? How far is Coquimbo from Valparaiso as to distance and time of travel? In what direction is it from Valparaiso? How does its harbor compare, as to safety and general advantages, with that of Valparaiso? How is it as to the course of a voyage around Cape Horn to Panama or San Francisco? When did the "Amalia" arrive at Coquimbo? Did she sail for any port with same? If so, what port and when? Was E. H. Ackley agent, or did he then act as agent for any person, and for whom? Did he give any directions as to this lot of coal at Coquimbo? Were such directions oral or written? If written, produce the same, and annex them to your deposition. If you refuse to do this, state why you refuse, and annex a copy, and say whether the same is a true copy. Was said lot of coals at Coquimbo purchased for any particular steamer? If yea, give her name. Was it used for such steamer? If not, why was it not? What coal was bought for said steamer, and by whose directions, and at what price was it bought?

To the fourth interrogatory he saith: Yes; that the quantity of coal was about three hundred tons; that it was good steam coal from Liverpool, and supposed to be Welsh, and its price was eleven dollars and fifty cents per ton at Coquimbo, and thinks there were no other lots of coal of this sort and quality for sale at the time, either in Valparaiso or Coquimbo, and if there were any other lots of coal for sale, thinks they could not be bought at a less price; that this lot of coals were paid for by Cross, Hobson & Co., by their acceptance, on presentation, of the bill of parcels; that on whose account such coal was purchased, whether directions to purchase were verbal or by letter, or if such coal was kept at Coquimbo after the purchase, or how long thereafter, if kept, or whether shipped from Coquimbo, or in what vessel, deponent saith not; that Coquimbo is distant from Valparaiso about one hundred and ninety-six miles by sea, and by steam communication twenty-four hours; that it lies in a northerly direction, and is considered the finest harbor in Chili—at all times safer than Valparaiso—especially so between May and September—and quite as easy of access as Valparaiso; and the remaining interrogatories under this head he saith he knoweth not.

Fifth interrogatory. Was the lot of coals bought from the "Duncan" taken in her to San Francisco? Would the master of her consent to go to San Francisco on any terms, or on any terms as favorable as those offered by the "Charles V." and "Duncan?" State fully the reason of such transhipments.

To the fifth interrogatory he saith: No; that the lot of coals purchased from the "Duncan" were not taken in her to San Francisco; that the master, being engaged to return to England with a cargo on owner's account, would not consent to go to San Francisco; that the reason why the coals were transhipped was on account as stated above.

Sixth interrogatory. What was the state of the coal market at Valparaiso, and what were the prices of coal then of the same sort and quality as the lot at Coquimbo, from 1st July, 1850, to 1st November, 1850? Give the times within this period when the prices rose or fell, and the degrees to which they rose and fell, and the state of the market as to quantities for sale at such times, and all other information within your knowledge, as to the matters herein above inquired of.

What were the usual rates of commission at Valparaiso and Coquimbo on purchase of coal and the business connected therewith? State fully.

To the sixth interrogatory he saith: That between the first of July and first of November, eighteen hundred and fifty, no coal would appear to have been sold below eleven dollars, nor above twelve dollars, though sales were effected at both those quotations; that the market was very scantily supplied with coal between above dates; but with regard to the exact time within this period when the price of coal rose or fell, and the degrees to which they rose and fell, and exact quantity for sale, he knoweth not; that the rate of commission for purchasing, when without funds, was five per cent., and commission for procuring tonnage five per cent.

Seventh interrogatory. What was the character and quality of the coals bought at Coquimbo, and also of the cargoes of the "Lady Lilford" and "Duncan?" How did these different lots compare with each other? How did such lots compare with other lots at Coquimbo and Valparaiso at the times respectively when they were purchased?

To the seventh interrogatory he saith: That the three hundred tons of coal bought at Co[illegible]o were shipped at Liverpool, and it is likely were Welsh; the [illegible]go of coal per "Duncan" was Carrs Hartly coal, shipped from London, and I believe, both came under the denomination of good steam coal; that the cargo of the "Lady Lilford" he saith he knoweth not; that he is not aware, and thinks that no other lots of coal existed at the same time, either in Valparaiso or Coquimbo.

Last interrogatory. Do you know of any other matter or thing of benefit or advantage to the plaintiff herein? If yea, state the same fully, as if particularly interrogated thereunto.

To the last interrogatory he saith: That he is not aware of any other matter or thing of benefit to the parties herein.

The defendant then read in evidence the cross-interrogatories put to the said T. James Harker, on said examination under the said commission, which cross-interrogatories and answers are as follows:—

First cross-interrogatory. If, in answer to the second interrogatory, you state that the coal mentioned in the said interrogatory, or any part thereof, was bought at the request of the defendant, or any agent of his, state fully the facts upon which you so state. State how you know it.

If you state that it was purchased at the request of any agent of the defendant, in addition to the above, state how you know he was such agent, and what was the character of such agency, and how you know that.

To the first cross-interrogatory he saith: That he knoweth not at whose request the coals were purchased.

Second cross-interrogatory. If, in answer to the fourth interrogatory, you answer that you do know of the purchase of coal at Coquimbo about the month of July, 1850, by Alexander Cross, or Cross, Hobson & Co., state which the purchase was made by, and who composed the firm of Cross, Hobson & Co., and how you know of such purchase.

To the second cross-interrogatory he saith: The coals at Coquimbo were bought by Alexander Cross and David Thomas, both partners of the firm of Cross, Hobson & Co., but deponent knows not all who composed the said firm of Cross, Hobson & Co.; further, deponent saith that he did not examine personally the coal at Coquimbo, but from original invoices he believed them to be good steam coal, and sold them as such.

He also saith that he was in Valparaiso between the months of July and September, eighteen hundred and fifty, and was well acquainted with the coal market, from having had occasion to sell coal during that period.

And he further saith, that he has never been in the employ, nor any way connected with Alexander Cross, or Cross, Hobson & Co., otherwise than as one merchant with another in the regular course of business.

The plaintiff then read in evidence the testimony of Frederick W. Schawger, one of the witnesses examined at Valparaiso upon commission issued as above stated, who, to the following several interrogatories put to him by and on the part of the plaintiff, replied as follows:—

First interrogatory. What is your age, residence, and occupation? What was it between first March and first November, 1850?

To the first interrogatory he saith: He is forty years of age; that he resides in Valparaiso, and that he is by occupation a merchant, and that his residence and occupation between the first of March and first of November, in the year eighteen hundred and fifty, was the same as he now declareth it to be at the present time.

Third interrogatory. Look at the papers hereto annexed, marked Exhibits Nos. 3 and 4, and purporting to be charter-parties of the vessels named "Carlos V." and "Amalia," and state whether you are a subscribing witness to them or either of them; and, if yea, then specify to which you are a witness. Was such charter-party executed in your presence by any of the parties thereunto? If yea, then state by which of the parties it was so executed. What was the freight agreed to be given to the "Carlos V." and "Amalia?"

How did such rates compare with the current rates at Valparaiso at the time of chartering said vessels respectively?

To the third interrogatory he saith, that he is not a subscribing witness to either the charter-party of the "Amalia" or "Carlos V.," but that the charter-party of the latter, of "Carlos V.," was made out by Frederick Matthey, and that said Frederick Matthey was in his employ as clerk, on the twentieth day of August, eighteen hundred and fifty, and having examined his signature as subscribing witness to charter-party of "Carlos V.," declares it to be the signature of the said Frederick Matthey; and further states, that the freight of seventeen hard dollars per ton of two thousand two hundred and forty pounds was the current rate of freight in August, eighteen hundred and fifty.

He further states that the said Frederick Matthey is not, nor has been in Valparaiso for upwards of one year; he believes he resides at present in London.

Last interrogatory. Do you know any other matter or thing of benefit or advantage to the plaintiff herein? If yea, state the same fully, as if particularly interrogated thereunto.

To the last interrogatory he saith, he is not aware of any other matter of benefit to the parties herein.

The plaintiff then read the charter-party of the "Charles V." referred to in the third interrogatory of said commission as Exhibit No. 4, a copy of which is as follows:—

It is hereby this day mutually agreed and stipulated, between Capt. Charles Sheridan, of the Belgian ship "Charle Quinit," now in the bay of Valparaiso, on the one part, and Messrs. Cross, Hobson, and Co., merchants of Valparaiso, on the other part, as follows:—

1st. Messrs. Cross, Hobson, & Co. engage to load on board of the said vessel a quantity of coals of about 420 @ 440 tons (the shippers to have the option of filling any spare room there may be left) for San Francisco (Upper California).

2d. The freight for said coals is hereby stipulated and agreed at the rate of sixteen hard silver dollars per ton of 2,240 lbs. English avoirdupois weight, payable on delivery of the cargo, in cash in the current silver or gold coin of the country, or its equivalent, or in gold dust at the rate of $16 per ounce.

3d. The coals to be put alongside the vessel at Valparaiso, free of expense to the ship, and to be taken from her in the same manner in San Francisco.

4th. The coals to be landed at Valparaiso with all possible dispatch, and for discharging at San Francisco forty running lay days (Sundays excepted) are allowed, to commence from the day the master gives notice of being ready to discharge.

5th. If at the expiration of the lay days the coals be not discharged, demurrage shall be paid to the vessel at the rate of forty dollars per day for each and every day's detention. For the true and exact performance of this agreement, the parties herein named bind them-

selves in the penal sum of two thousand dollars, to be paid by the party delinquent to the party observant in the true and punctual performance of these presents.

In witness whereof the said parties have hereunto set their hands at Valparaiso, this twentieth day of August, 1850.

Note. In article second, in reference to the freight being paid in gold dust, is now null and void.

CROSS, HOBSON, & CO.
CHAS. SHERIDAN.

Witness: PEDRO PEREZ, to the signature of Cross, Hobson, & Co.
T. MATTHEY, to the signature of Capt. Sheridan.

The plaintiff also read in evidence the testimony of Edward Vigneau, one of the witnesses examined at Valparaiso, South America, upon said commission issued as above set forth, who, to the following interrogatories put to him by and on the part of the plaintiff, answered as follows :—

First interrogatory. What is your age, residence, and occupation? What was it between first of March and first November, 1850 ?

To the first interrogatory he saith: That he is forty years of age; that he resides in Valparaiso, and that he is by occupation a merchant, and that his residence between the first of March and the first of November, in the year eighteen hundred and fifty, was the same as he now declareth it to be at the present time.

Third interrogatory. Look at the papers hereto annexed, marked Exhibits No. 3 and 4, and purporting to be charter-parties of the vessels named "Charles V." and "Amalia," and state whether you are a subscribing witness to them or either of them. If yea, then specify to which you are a witness. Was such charter-party executed in your presence by any of the parties thereunto? If yea, then state by which of the parties it was so executed. What was the freight agreed to be given to the "Charles V." and "Amalia?" How did such rates compare with the current rates at Valparaiso at the time of chartering said vessels respectively?

To the third interrogatory he saith: That he, in the name of his firm, De Born, Vigneau & Grisar, was a subscribing witness to the charter-party of the "Amalia," entered into between Cross, Hobson & Co. and Captain De Panro, on the tenth day of September, eighteen hundred and fifty; that said charter-party was executed in his presence, and that the rate of freight agreed upon was seventeen hard dollars per ton, of two thousand two hundred and forty pounds avoirdupois; and that said rate was what was then current, vessels being at that period much wanted.

Last interrogatory. Do you know any other matter or thing of benefit or advantage to the plaintiff herein? If yea, state the same fully, as if particularly interrogated thereunto.

To the last interrogatory he saith: That he is not aware of any matter or thing of benefit to the parties herein.

The plaintiff then read the charter-party of the "Amalia," referred to in the third interrogatory of said commission as Exhibit No. 3, of which the following is a copy:—

It is hereby this day mutually agreed and stipulated between Capt. E. De Panro, of the Belgian ship "Amalia," now in this bay of Valparaiso, on the one part, and Messrs. Cross, Hobson & Co., merchants of Valparaiso, on the other part, as follows:—

1st. Messrs. Cross, Hobson & Co. engage to load on the said vessel about 450 tons (four hundred and fifty tons) of coal, 100 (one hundred) tons, more or less, in the Bay of Valparaiso, and 350 (three hundred and fifty) tons, more or less, in the Bay of Coquimbo, for San Francisco (Upper California).

2d. The freight for said coals is hereby stipulated and agreed at the rate of $17 (seventeen dollars), hard, per ton of 2240 lbs. (two thousand two hundred and forty pounds) English avoirdupois weight, payable on delivery of the cargo, in cash, in the current silver or gold coin of the country, or its equivalent.

3. The coals in both ports to be put alongside of the vessel free of expense to the ship, and to be taken from her in the same manner in San Francisco.

4th. The coals to be loaded with all possible dispatch, and, for discharging at San Francisco, forty running lay days (Sundays excepted) are allowed, to commence from the day the master gives notice of being ready to discharge.

5th. If, at the expiration of the lay days, the coals be not discharged, demurrage shall be paid to the vessel at the rate of $40 (forty dollars) per day for each and every day's detention.

6th. The vessel to be consigned to Messrs. Cross, Hobson & Co., at San Francisco, who are to enter and clear her at the custom house, charging the customary commission.

For the true and exact performance of this agreement, the parties herein named bind themselves in the penal sum of $2000 (two thousand dollars), to be paid by the party delinquent to the party observant in the true and punctual performance of these presents.

In witness whereof the parties have hereto set their hands at Valparaiso, this day, 10th September, 1850.

E. DE PANRO.
CROSS, HOBSON & CO.

As witness: De Born, Vigneau & Grisar.
Ed. Byerback.

Note. Should it not be mutually agreed between captain and consignees relative to the weight of coal on board the vessel, to weigh the same on delivery.

E. DE PANRO.
CROSS, HOBSON & CO.

The plaintiff then read in evidence the testimony of Edward Byerback, one of the witnesses examined at Valparaiso upon said com-

mission, who, to the following several direct interrogatories put to him by and on behalf of the plaintiff, answered as follows:—

Firt interrogatory. What is your age, residence, and occupation? What was it between first of March and first November, 1850?

To the first interrogatory he saith: I am fifty years and upwards; reside in Valparaiso as consul general for the Hawaiian Islands, and consul for some of the States of Germany; since January 1st of the present year (one thousand eight hundred and fifty-three) I am a partner in the firm of Cross & Co., of this city and of San Francisco, State of California; between the first of March and the first of November, one thousand eight hundred and fifty, I followed the occupation of accountant and law agent, as I had done for some years, in addition to my consular duties; in my capacity of accountant, Mr. Alexander Cross, on his return to Valparaiso in April, 1850, requested me to superintend the arranging the books of Cross, Hobson & Co., of this city, which I commenced on the second day of May, one thousand eight hundred and fifty.

Second interrogatory. Do you know of the purchase of coal on the vessels the "Lady Lilford" and "Duncan?" How much coal was purchased from each of said vessels? When and where were such cargoes purchased, respectively? By whom were such cargoes paid for? When were they paid for? For whose account and at whose request were such lots of coal bought? Was such request verbal or by letter? If by letter, give the date or dates thereof. To what place were such two lots sent, and in what vessels were they sent? Was the lot in the "Duncan" sent on in her or transhipped into other vessels?. If transhipped, give the name of the vessel into which such lot was transhipped, and how much was sent by each vessel, and when they sailed from Valparaiso respectively?

To the second interrogatory he saith: Yes; from the "Lady Lilford" there were purchased, in July, one thousand eight hundred and fifty, five hundred tons of coal, of two thousand two hundred and fourty pounds each; and from the "Duncan," four hundred and forty tons, also of two thousand two hundred and forty pounds each, about the same time; both purchases were made in my presence, and both were paid for by Cross, Hobson & Co., for account and by order of George Law, Esq., of New York, in compliance with his letters to Mr. Alexander Cross, dated New York, March twelfth, and May twenty-eighth, eighteen hundred and fifty; both cargoes were sent to San Francisco; the "Lady Lilford" proceeded there, with her coal on board, and it was about four hundred tons; the "Duncan's" was transhipped to the Belgian vessel "Charles V.," and the remainder was shipped by the Belgian vessel "Amalia;" the "Charles V." sailed from Valparaiso on or about the eleventh of September, eighteen hundred and fifty, and the "Amalia" sailed from Valparaiso for Coquimbo, to complete her loading there, on or about the twenty-sixth of the same month; both the "Lady Lilford's" and the "Dun-

can's" cargo were paid for at Valparaiso, by Cross, Hobson & Co., as above—the "Duncan" to Messrs. Heathy, Harker & Co., and the "Lady Lilford's" to her owners; the coal at Coquimbo was originally purchased by Cross, Hobson & Co. for the purpose of supplying Mr. Law's steamer, the "Antelope," commanded by Capt. E. H. Ackley, and with a view of avoiding the delay which took place in coaling Mr. Law's steamer "Republic," from the frequent-occurring bad weather and heavy swell in the port of Valparaiso during the winter months (southern hemisphere), June to August; but as the "Antelope" required some repairs to her deck, which could only be done at Valparaiso, and the weather promised to be fine, and as the "Antelope" would go on coaling while the carpenters were sheathing her deck, Capt. Ackley, by letter dated 30th August, desired Cross, Hobson & Co., in the best interest of Mr. George Law, and active as the agent of the same, to forward to San Francisco the coal purchased at Coquimbo for the said "Antelope"—the more so as the two cargoes of coal sent, Capt. Ackley said, were smaller in quantity than intended by Mr. Law; and, in a personal interview with Mr. Alexander Cross, the said Capt. Ackley further did urge the same request, acting for and on behalf of Mr. George Law, aforesaid.

And this deponent further saith, that the whole of this conference between Mr. Alexander Cross and Captain Ackley did take place in his (this deponent's) presence, and that he distinctly recollects the discussion on the subject; that steamer was already forty days in arrears of her calculated time; and this deponent further saith, the firm of Cross, Hobson & Co., of Valparaiso and San Francisco, at that period was constituted by and composed of Mr. Alexander Cross, Mr. William Hobson, Mr. David Thomas, Mr. William Hooper, and Mr. Joseph Hobson.

Third interrogatory. Look at the papers hereto annexed, marked Exhibits Nos. 3 and 4, and purporting to be charter-parties of the vessels named "Charles V." and "Amalia," and state whether you are a subscribing witness to them, or either of them; and if yea, then specify to which you are a witness. Was such charter-party executed in your presence, by any of the parties thereunto? If yea, then state by which of the parties it was so executed. What was the freight agreed to be given to the "Charles V." and "Amalia?" How did such rates compare with the current rates at Valparaiso at the time of chartering said vessels, respectively?

To the third interrogatory he saith: that he is a witness to the signatures affixed to the charter-party of the "Amalia," and that the same was signed by both Mr. Edward Vigneaux, by his firm of De Born, Vigneaux & Grisar, as witness, and by Captain E. De Panro, and by Mr. David Thomas, and delivered in his presence; that both these charter-parties of "Amalia" and "Charles V." were in his presence repeatedly exhibited, and referred to by the masters of said vessels, respecting lay days, and the signing of bills of lading: the rates of freight were the lowest then current, as on equal terms,

English vessels would always have been preferred, on account of the greater facility with underwriters, in case of any claim upon them, since ship and master known, or whose character can easily be ascertained in England, are naturally more desirable than foreigners; the rates of freight of charter "Amalia" was seventeen hard dollars per ton of two thousand two hundred and forty pounds, and the rate of freight of "Charles V." was seventeen hard silver dollars for same ton of two thousand two hundred and forty pounds.

Fourth interrogatory. Do you know of a purchase of coal at Coquimbo about the month of July, 1850, by Alexander Cross, or Cross, Hobson & Co.? What was the quantity, character, and quality, and price of such lot? Were any other lots of this sort and quality for sale at this time at Valparaiso or Coquimbo? If any such lots were for sale, could they at this time, when this lot was purchased, be bought for less price? Who paid for such lot of coal? When was it paid for? On whose account was such coal purchased? Were the directions to purchase verbal or by letter? If by letter, give the date or dates thereof. Was such coal kept at Coquimbo after the purchase thereof? If yea, state how long thereafter it was so kept. Was it shipped from Coquimbo? If yea, in what vessel? How far is Coquimbo from Valparaiso as to distance and time of travel? In what direction is it from Valparaiso? How does its harbor compare, as to safety and general advantages, with that of Valparaiso? How is it as to the course of a voyage around Cape Horn to Panama or San Francisco? When did the "Amalia" arrive at Coquimbo? Did she sail for any port with the same? If so, what port, and when? Was E. H. Ackley agent, or did he then act as agent for any person, and for whom? Did he give any directions as to this lot of coal at Coquimbo? Were such directions oral or written? If written, produce the same, and annex the same to your deposition. If you refuse to do this, state why you refuse, and annex a copy, and say whether the same is a true copy. Was said lot of coals at Coquimbo purchased for any particular steamer? If yea, give her name. Was it used for such steamer? If not, why was it not? What coal was bought for said steamer, and by whose directions, and at what price was it bought?

To the fourth interrogatory he saith: yes; three hundred tons, more or less, of good Welsh steam coal, from Liverpool (England), were purchased in the month of July, eighteen hundred and fifty, by Cross, Hobson & Co., of Valparaiso, from Messrs. Heathey, Harker & Co., also of Valparaiso, aforesaid, at the price of eleven dollars and fifty cents per ton at Coquimbo, as already stated by deponent, for the supply of Mr. Law's steamer the "Antelope," commanded by Captain E. H. Ackley, at that time daily expected at Valparaiso; it was on account of the delay experienced by Mr. Law's steamer the "Republic" in coaling at Valparaiso, during northerly gales, in the month of June, in the same year, eighteen hundred and fifty, by reason of bad weather and heavy northerly swell, that the coal was

provided at Coquimbo (where "northers" do not prevail) for the steamer "Antelope," in order to avoid the possibility of delay from the same cause, since Mr. Law has so urgently requested that no pains should be spared to give the "Antelope" every possible dispatch.

And the deponent further saith, there were no other parcels of coal on sale afloat at Valparaiso, and that the prices of eleven dollars fifty cents and twelve dollars per ton are very low, and below the average price of coals at Valparaiso; that he distinctly recollects the great pains Mr. Alexander Cross took to place cargoes expected, into competition with the coals he (the said Alexander Cross) was purchasing, and that no coal was to be had at a less price at that time; Cross, Hobson & Co. paid for the coal so purchased, deliverable at Coquimbo, and then lying at said port, on the sixth of November, eighteen hundred and fifty; that it was purchased on account of Mr. George Law, of New York; that the directions for such purchase were by letter from said Mr. Law, dated April thirteenth, eighteen hundred and fifty; that the lot of coal so purchased, deliverable at Coquimbo, was kept in said port of Coquimbo, after the purchase thereof, as already stated, for steamer "Antelope," and, because said vessel did not go there, was shipped and laden on board of the Belgian vessel "Amalia," as above stated.

And this deponent further saith, that the port of Coquimbo is about two hundred nautical miles from Valparaiso, and that the Pacific Steam Navigation Company's steamers, carrying the mails, take about two-and-twenty hours to perform the distance, southward bound, when they generally have to meet a heavy swell and head winds from the south.

And this deponent further saith, that he does know the port of Coquimbo, and has been there personally; that it lies to the north of Valparaiso, as any one may see by reference to any chart; that it is a cozy, safe harbor, and opens only to the west, and where strong winds do little prevail. The port of Coquimbo, as to the course of a voyage around Cape Horn to Panama or Valparaiso, would stand much the same as the port of Valparaiso, allowing for Coquimbo being further north.

Fifth Interrogatory. Was the lot of coals bought from the "Duncan" taken in her to San Francisco? Would the master of her consent to go to San Francisco on any terms, or on any terms as favorable as those offered by the "Charles V." and "Duncan?" State fully the reason for such transhipments.

To the fifth interrogatory he saith, the lot of coal purchased from the "Duncan" was not taken in her to San Francisco; the master of said vessel, the "Duncan," would not consent to proceed to San Francisco, though urged and pressed in all manner of ways by Mr. Alexander Cross to do so; the master of the "Duncan" was under orders from his owners to return to England with a cargo on owner's account, and by that reason could not go on any terms; the reason

why the "Duncan's" cargo was transhipped to the two Belgian vessels, the "Amalia" and "Charles V.," was, because the master of the "Duncan," for the reason stated, could not consent to proceed to San Francisco.

Sixth Interrogatory. What was the state of the coal market at Valparaiso, and what were the prices of coal then, of the same sort and quality as the lot at Coquimbo, from 1st July, 1850, to 1st November, 1850? Give the times within this period when the prices rose or fell, and the degrees to which they rose and fell, and the state of the market as to quantities for sale at such times, and all other information within your knowledge, as to the matters herein above inquired of. What were the usual rates of commission at Valparaiso and Coquimbo on purchases of coal and the business connected therewith? State fully.

To the sixth interrogatory he saith, I had occasion to follow the coal market at Valparaiso very closely during the period mentioned in the interrogatory; no cargo afloat was sold under eleven dollars per two thousand two hundred and forty pounds, during that period, and several lots brought twelve dollars for same ton of two thousand two hundred and forty pounds, during the said period; some time prior to the same, coals from vessels, when lay days were up, were sold for a less price, as there was a glut early in the month of April and no demand, and consignees were unwilling to incur the expense of loading coals; that momentary pressure gone by, those who bought coal on speculation, at a low figure, varied prices to remunerating rates; on the twenty-ninth May, coal afloat was scarce and wanted; in the month of June, Cross, Hobson & Co. bought of Viver & Co., at $12 25, to be put on board at seller's expense, and they did buy afloat ex "Norma" at same rates—buyers paying shipping expenses, and to make good deficiencies of coal rejected; the said Cross, Hobson & Co. did purchase of Mr. Joseph Thomas Ramos, also of Valparaiso, 159½ tons of coal at fifteen dollars per ton, on shore—buyers paying shipping expenses; and a part of these purchases was by the small Spanish ton of two thousand pounds weight; and after the month of May, very little coal arrived at Valparaiso—shippers in Great Britain having become discouraged by the sacrifice made; in October two cargoes arrived after a long interval, and were sold at twelve dollars, on board.

And this deponent further saith, that he thinks it right to go into these details, in justice to all parties concerned, as they might be misled by the momentary low price of coal current here so shortly before the period mentioned. And in further answer to the interrogatory, he saith, the established and usual rates of commission at Valparaiso and Coquimbo in purchases of coal, as in all other merchandise, without funds in hand, is and always has been five per centum on invoice cost and charges; it is also customary to charge five per centum commission on the amount of freight of any vessels

chartered for the conveyance of coals or other merchandise so purchased.

Seventh Interrogatory. What was the character and quality of the coals bought at Coquimbo, and also of the cargoes of the "Lady Lilford" and "Duncan?" How did these different lots compare with each other? How did such lots compare with other lots at Coquimbo and Valparaiso at the times, respectively, when they were purchased?

To the seventh interrogatory he saith, the character and quality of the coals bought at Coquimbo, and those of the "Lady Lilford" and "Duncan," were all good steam coal, and Mr. Alexander Cross took great pains to satisfy himself on that head; the coal at Coquimbo was good steam coal—reported to be Welsh; there was no other coal on sale afloat at Valparaiso, neither at the time of the purchase of the "Lady Lilford's" nor "Duncan's" cargoes.

Eighth interrogatory. Do you know of the transmission of any letters from Alexander Cross, Cross & Co., or Cross, Hobson & Co., to George Law or any of his agents, especially letters of the following dates: 1850, June 5, June 24, June 30, July 1 (two letters), July 29, August 8, August 27? If yea, how were all the letters to Law or his agents, whether above enumerated or not, sent to him? Answer respectively as to all; annex copies of such letters to your deposition, and state if the same are true copies.

To the eighth interrogatory, he saith yes; the letters named were letters from Cross, Hobson & Co., of Valparaiso, to Mr. George Law, of New York, and were all forwarded in the regular course of transmission, and the copies of said letters herewith are true copies of same, collated; all letters to Mr. George Law, to New York, were sent under cover to Messrs. Smith & Lewis, at Panama; those to Mr. Henry Tracy, Mr. Law's agent at Panama, were forwarded to that gentleman's address direct.

Last interrogatory. Do you know of any matter or thing of benefit or advantage to the plaintiff herein? If yea, state the same fully, as if particularly interrogated thereunto.

To the last interrogatory he saith, he knows of no other matter or thing of benefit or advantage to the parties herein, beyond what he has voluntarily said and declared under the preceding several heads.

The defendant then read in evidence the cross-interrogatories put to the said Edward Byerback on said examination under the said commission, which cross-interrogatories and answers are as follows:

First cross-interrogatory. If, in answer to the second interrogatory, you state that the coal mentioned in said interrogatory, or any part thereof, was bought at the request of the defendant or any agent of his, state fully the facts upon which you so state; state how you know it. If you state that it was purchased at the request of any agent of the defendant, in addition to the above, state how you know

he was such agent, and what was the character of such agency, and how you know that.

To the cross-interrogatory on the contents of second interrogatory he saith, that as he hath already declared, all these purchases of coal were made by Cross, Hobson & Co., by order of George Law, the defendant to his suit, had in compliance with the said George Law's letters, dated New York, March the twelfth, April thirteenth, and May the twenty-eighth, eighteen hundred and fifty. By the latter letter, Mr. George Law orders the purchase of two cargoes of coal afloat, to be sent on to his (the said George Law's) account to San Francisco; the coal furnished by Mr. Law's order for the supply of steamer "Antelope," at Coquimbo, could not be received by said steamer, by reason of repairs to her deck required, which could only be done at Valparaiso; all which facts are fully stated, explained and corroborated, in and by the letter of Captain Ackley, commanding said steamer "Antelope," to Cross, Hobson & Co., dated twentieth August, eighteen hundred and fifty.

If, in the spirit of Mr. Law's letter to Cross, Hobson & Co., the said Captain Ackley was not Mr. Law's confidential agent, and to be respected and regarded as such by Cross, Hobson & Co., the fact of forwarding the coal so bought to Coquimbo became one of necessity, since the "Antelope" could not receive the same at any rate; the cargo of the "Duncan" was more than the "Charles V." could carry, and a vessel had to be chartered at any rate to carry the balance of coal ex "Duncan" to San Francisco.

Second Cross-Interrogatory. If in answer to the fourth interrogatory you answer that you do know of the purchase of coal at Coquimbo, about the month of July, 1850, by Alexander Cross, or Cross, Hobson, & Co., state which the purchase was made by, and who composed the firm of Cross, Hobson, & Co., and how you know of such purchase.

To the second cross-interrogatory he saith, the purchase of coal at Coquimbo was made in July, eighteen hundred and fifty, by Mr. Alexander Cross and Mr. David Thomas—talked of for days, and known to every one about the house, and in the market; a part of the negotiation on the subject took place in my presence; there were only two partners of the firm of Cross, Hobson, & Co. at that time at Valparaiso; the other partners to said firm were Mr. Wm. C. Hobson, Mr. William Hooper, and Mr. Joseph Hobson.

Fourth Cross-Interrogatory. If you state that E. H. Ackley was agent for the defendant, state how you know it; the nature of his agency, and how you know that.

To the fourth cross-interrogatory he saith, that he was not at Coquimbo in the year eighteen hundred and fifty, and therefore did not examine the coal there; in my capacity of an accountant, I undertook to superintend the arranging of the books of Cross, Hobson, & Co., which were in arrears, in May, eighteen hundred and fifty, and by arrangement had my office in their store, where I

carried on my own business; I was not in their employment in any other respect.

The defendant then produced, on the call of the plaintiff, the letters addressed to the defendant, which are hereinafter set forth and read by the plaintiff.

The plaintiff then read in evidence a letter from Cross, Hobson, & Co. to the said defendant, of which the following is a copy:—

Valparaiso, 29th May, 1850.

George Law, Esq., New York.

Dear Sir: Immediately on receipt of your letter of 13th March, to A. Cross, with order for coals on the 26th inst., we secured what was here, say the 500 ton cargo, per British bark "Cumberland," at $11 if delivered here, giving ten days clear from the 25th inst. to resolve, or $20 if delivered in Panama, giving thirty running lay days for that purpose. We have since had bad weather and few arrivals, and we are in hopes that some other cargoes will drop in before the 4th proximo, in order to send on the "Cumberland" and have sufficient on hand for the steamers "Republic" and "Antelope," as per your order. Since our respects of 11th inst. to Mr. Roberts (of which we enclose a copy, being one interest), the whole of the coals here have been disposed of for Panama, Coquimbo, &c. We have the refusal of those per "Lady Lilford," sailed 16th March, from Dundee & Brothers, sailed in February; and you may rely on our management to avoid detention on the arrival of the steamers, in providing the 450 and 350 tons here, and 500 and 1000 tons for Panama. We shall advise you of what is done by one of themselves, next month, or the "Northerner."

The quarantine is partly done away with here now. Last steamer in is stern-wheel boat "Sea Gull," advertised for San Francisco direct. The "W. J. Pease" not yet arrived. Referring to the other communications of the writer, and to prices current, and newspaper report, care Mr. H. E. Tracy, Panama, who has written us for sundries, which we will attend to:

We are, dear sir, yours, truly,

CROSS, HOBSON, & CO.

The plaintiff also read in evidence another letter from said Cross, Hobson, & Co. to said defendant, of which the following is a copy:—

(Per Cumberland.) Valparaiso, 5th June, 1850.

George Law, Esq., New York.

Dear Sir: We had this pleasure on the 29th ult., as per copy enclosed, and now forward the "Cumberland's" cargo to Panama to Mr. Tracy, as per copy of our respects to him of date, also enclosed. You will observe that we had to cover insurance here, which is not so easy as with you; but, as by last mail, it was undecided about the ship proceeding, we could not positively order it, and no immediate order to the U. States for insurance would be in time. It will be

well you provide in future for this, by having an open policy, and advise us specially on this head, as purchases here are settled here, and having positive cash offered by others we could not buy with a contingent payment. We have requested Mr. Tracy to remit us the amount, bills on Panama not being negotiable here for the present.

We trust soon to see the steamers, and have, meantime, 300 tons a $12.25 on board (to be kept till their arrival) which, under the circumstances, is a favorable purchase.

We are on the look-out for balance of order for them and for Panama, which we hope to accomplish in good time, and, meantime, do not draw on you, and are,

Dear Sir, yours truly,

CROSS, HOBSON & CO.

The plaintiff also read in evidence another letter from said Cross, Hobson & Co., to said defendant, of which the following is a copy:

(Per Brothers, to Panama). VALPARAISO, 10th June, 1850.

GEORGE LAW, Esq., New York.

Dear Sir: Since our last of 5th, per "Cumberland," still here detained, we have secured the cargo of "Brothers," of 425 tons, best coal for steam, and send her on to-morrow morning to Mr. Tracy at Panama, as per copies of letter, invoices, &c., herewith amount:

8,930.4 per "Brothers," no insurance being for risk of U. S. Mail Co.

10,615.6 per "Cumberland," as advised 5th, per copy inclosed.

——— In all,

19,546.2 for 925 tons against your order of 13th March, for 1,000 tons for account of U. S. Mail Steamship Co., which we request Mr. Tracy to remit us for, free of freight, insurance, &c. a $17¼ per doubloon—our current rate here; and should he send gold dust or eagles, it will be a remittance in favor of the Company.

The steamers "Republic" and "Antelope" do not yet arrive, and we suppose their detention arises from epidemic in Rio.

The quantity of coal ordered for them is not quite complete, but several are daily expected, and we hope to have all ready ere they arrive. The "Brothers," having other offers for Panama, would not sell for delivery here, and so passes on.

We are always, dear Sir,

Your obedient servants,

CROSS, HOBSON & CO.

P. S.—The stern-wheel, the "Sea Gull," left for San Francisco, under sail, yesterday.

The "West Point" went into Coquimbo a few days since without calling here, from disorder among crew, engineers, &c.

The plaintiff then also read in evidence another letter from said Cross, Hobson & Co., to said defendant, of which the following is a copy:—

Valparaiso, 30th June, 1850.

GEORGE LAW, Esq., New York.

Dear Sir: The "Republic" arrived on the evening of the 21st, in bad weather, which has continued almost until yesterday. It is our worst season, and this has been very hard, a great many accidents having occurred among the shipping at anchor. We have used every effort in the intervals and procured permission to work on holidays, but could not cut short her detention more, having to take the coal from shore in lighters, through a surf. The detention of the "Northerner" will be shorter, she having arrived after the blow; but, that the "Republic" may reach Panama first, we have recommended Captain Hudson not to load too deep or tarry too long here, taking coal at our present slow rate, especially having plenty at Panama, and the difference of time so much against the steamer. We received your favors of 13th April, per "Republic," on the 22d inst. "Endora" arrived 26th. 13th and 26th per mail 24. "Northerner" arrived 27th, 28th.

And we will endeavor to have provided afloat the coal for "Antelope," before the 10th prox., and avoid delay. These are still scarce.

1 July, to Mr. Law.—We wrote you on 10th, as per copy enclosed. The "Republic" has now all her coal on board, nearly 450 tons, just in time to escape a fresh norther. Capt. Hudson has personally exerted himself very much, but seems short of officers of efficiency. We trust she will have a short run down, being now in good time. No passengers are offering from this port at the moment, which we are sorry for, so as to diminish her expenses, which, from the circumstances already mentioned, have been heavier than we anticipated, as explained in the accounts. We have made inquiries as to coal in Coquimbo, in the event of our having bad weather when the "Antelope" comes, which in our winter season is so common.

The ship "Eugenia," of which I wrote you some time since, as intending to go to California with coal of which we had the refusal, has not been able to procure them, and is just sold here.

We are, dear sir, always yours truly,

CROSS, HOBSON & CO.

The plaintiff read in evidence another letter from said Cross, Hobson & Co. to said defendant, of which the following is a copy:—

(Per Steamer Northerner.) Valparaiso, 4th July, 1850.

George Law, Esq., New York.

Dear Sir: We beg leave to hand you herewith duplicates of our last respects, 30th ult. and 1st inst., by your Co. steamer "Republic" copies of her three accounts, and of invoice of flour and hams shipped

by her by order of Mr. Tracy, being the only portion we could execute, owing to the boisterous state of the weather, loss of lighter, and other mishaps consequent thereon.

Capt. Hudson determined to get away in the night of the first, had a boat swamped in the surf (fortunately no lives lost), but the night became so dark and the rain so incessant, that the "Republic" finally, with all the sacrifice of labor and money, did not get away till noon on the 2d.

Captain Hudson's draft on you for her disbursements, $300, at 10 days, of Virginia Selden, $7963.7, at 3 days, of ourselves, will be advised you by him on his passage down. He would perhaps inform you of some difficulties arising from collision of "Republic" with a British merchant vessel and consequent claim for damages sustained by the latter, not settled by the Chili authorities, who, God knows, are slow in all things. To enable the steamer to leave the port, we had to become responsible for result. We understand some seven hundred dollars have been awarded against her, but the sentence is not out officially. We hope, however, to bring the matter to a close in time for "Endora" steamer to leave this in two days from to-day for Panama.

We remain, with much regard, dear sir,
Your most obedient servants,
CROSS, HOBSON & CO.

The plaintiff also read in evidence another letter from said Cross, Hobson & Co. to said defendant, of which the following is a copy:—

(Per Endora to Panama.) Valparaiso, July 15th, 1850.

George Law, Esq., New York.

Dear Sir: We had this pleasure per "Republic" steamer, which sailed on 2d and the "Northerner," on 4th. This propeller has been above three weeks in the port and suffered much detention by bad weather, but your captains are more pushing. Coal is quite scarce, and we are happy to advise having secured a lot for the "Antelope," to be put on board in the fine port of Coquimbo (a day's sail to the north); where she will be quickly despatched, say @$11 50 on board; other sellers have been asking and getting from $13 @ $16.

We hope she will soon make her appearance now, and remain, dear sir, truly yours, CROSS, HOBSON & CO.

Enclosed copy of our last, of 4th.

We have not yet got the damage account "Republic" on "Village Girl" settled.

The plaintiff also read in evidence another letter from said Cross, Hobson & Co., to said defendant, of which the following is a copy:—

(Per Mail to Panama.) Valparaiso, 29th July, 1850.

George Law, Esq., New York,

Dear Sir: We addressed you last on 15th inst., as per copy en-

closed, and now reply to your esteemed favor of 28th of May, received 25th inst. Your order for two cargoes of coal for San Francisco we have filled as follows :—

500 tons per "Lady Lilford," Br. bark, to sail in 12 @ 15 days, @ $30, payable after delivery on board, in San Francisco, alongside steamers, lighters, &c., free of wharfage to vessel, or duty on coals to sellers, thirty running lay days for delivery and 10 more on demurrage if necessary, @ $25 per day. 444 tons per "Duncan," to arrive, now 85 days out, @ $12 on board here. Freight can be got from $16 @ $18 per ton, all best steam coals, tons 2,240 pounds. If she be not in in sixty days, we will have the option to cancel the purchase.

We note the sailing of the "Antelope" on 18th May, from N. Y., and your instructions as regards passengers from this. Her coals are provided at Coquimbo @ $11 50, as we advised. We have since filled other orders @ $12 50, there, and sales stopped till further arrivals; even $15 refused. The writer's advice, to order at once from England in January last, you will see was good.

We are happy to note 2000 tons on the way from Liverpool for San Francisco, for your account, forwarded by our Glasgow friends; should they call here, we will push them on. Sailing end of May, we do not look for them before September, as coal ships seldom come under four months, sometimes five months. At Callao, by last accounts, coals were scarce, as orders have come here, so the "Antelope" can leave Chili well provided in case of disappointment. Provisions, as requested by Mr. Tracy, we will send on in her, as indicated by you. The "New Orleans," arrived 26th, will not get off under a week. Captain's not over-pushing; she is of Howard's line, and been long delayed since leaving New York. Only 150 tons coal were ordered by owners, and she wants 350, which her agents have not got. The only cargo here belongs to you, and so they will have to scrape up ashore in small lots, we presume at high rates. We wrote Messrs. Charlick & Tracy of all these dispositions, for their government, as you request. Having at length settled the question of damage by the "Republic," when here, as economically as possible, we draw on you for the amount, $745 50, as requested by Captain Hudson, by the enclosed letter @ 3 per cent. in favor Messrs. Grinnell, Minturn & Co., which we pray you to honor accordingly. The voucher goes enclosed also. Bill No. 1911.

For the coals for "Antelope" we defer drawing until received and shipped, and we see what passengers offer. These are rather scarce, however. We are, dear sir, yours faithfully,

CROSS, HOBSON & CO.

The plaintiff also read in evidence another letter from said Cross, Hobson & Co., to said defendant, of which the following is a copy:—

(Per N. Orleans to Panama.) Valparaiso, 8th Aug., 1850.
George Law, Esq., New York,

Dear Sir: We addressed you on 29th inst., and are sorry to be still unable to advise the "Antelope's" arrival.

Bad weather has detained this steamer and the other shipping a good many days idle. The coals for San Francisco, per "L. Lilford," should start in a week, however.

This vessel cost nearly $16 on board, of but indifferent quality, and high prices seem likely to rule for coal here, and on the coast generally, for next six months. Our San Francisco house write us on 11th June: "The steamer 'Columbus' came consigned to the son of Mr. Collier, collector of the port, as instructed by Mr. Charlick, contrary to his agreement with us."

The writer understood that our house would be employed as agents, until the company should find it requisite to establish a special agency. They would, doubtless, agree for as moderate a commission as an agency would cost you, did you make a permanent arrangement, and we cannot believe that the company would not gain by using our house in San Francisco in general.

We are, respectfully, your faithful servants,
CROSS, HOBSON & CO.

The plaintiff also read in evidence another letter, from said Cross, Hobson & Co., to said defendant, of which the following is a copy:—

Valparaiso, 27th August, 1850.

Geo. Law, Esq., Dry Dock Bank, New York:

Dear Sir—Since our last respects, 8th inst., without any of your letters unreplied, we now beg to wait on you with a copy of charter party concluded 20th inst., for Belgian ship "Charles Quint," Chas. Sheridan, master, at $16—say sixteen dollars to take the cargo of the "Duncan" we purchased for you, arrived 13th inst. We tried hard to obtain freight at less; at all events, the forty days, including Sundays, may be of some advantage. The "Duncan" cargo is now transhipping to the "Charles V.," and we shall use our unwearied endeavors to get the latter dispatched as soon as can possible. Both the "Duncan's" and the "Lady Lilford's" coals will cost you, we are happy to say, ten dollars a ton less at San Francisco than the market price there at date of our last advices, 1st July. The "Lady Lilford" sailed for San Francisco 20th inst. We inclose copy of invoice of her cargo, amounting to $15,763 6, payable in California. The account of the coal per the "Antelope" steamer, we have made free to draw on you for $4,000; say four thousand dollars, at $14^{d}/_{2}$, order Jas. G. King & Sons, which please protect.

We are greatly disappointed at the "Antelope" not making her appearance here, having parted company six and twenty days ago from British schooner "Lion Hooper" (arrived here days

ago), at the Straits of Magellan. The "Antelope," however, had then only six days' coal left, and at this season of the year, when northerly gales prevail in the latitude of Chiloe, her delay does not make us uneasy, though it has naturally annoyed us a good deal, since it will thwart your arrangement. We have all along advertised her, but hardly expect any passengers for her here.

We have heard from your agent, Mr. Henry Tracy, by this mail; happy to find all your company's affairs at Panama were in satisfactory condition, though we much fear the extensive robbery reported on Z. N. & Co's. mule train may injure that route. We have ordered insurance on the cargo of the "Charles V."

There is some improvement in the slow movement of the British mail line from this coast, by a new arrangement which is to bring Valparaiso letters to England in about twenty days less than hitherto, say about fourteen, and for next year we are promised two mails per month.

We endorse duplicate vouchers of your steamer "Republic" harbor damage question with "Village Girl," and beg leave to apologize for the same having been omitted in duplicate from last respects.

Waiting the "Antelope" won't delay her arrival much longer.

We remain, very respectfully,
Dear sir, your obedient servants,
CROSS, HOBSON & CO.

The plaintiff then read in evidence a letter from Cross, Hobson & Co., to the defendant, as follows:—

(Per Antelope.) Valparaiso, 7th Sept., 1850.

George Law, Esq., Dry Dock Bank, New York:

Dear Sir—Our last respects to you were under date 27th ult., as per enclosed copy. Since then the steamer "Antelope" arrived after a tedious passage, owing to unfavorable weather and running short of fuel; had to put into Chiloe for wood, &c.

Owing to the many detentions of this vessel, Captain Ackley, her commander, thought it advisable to take in all her coals at this port in preference to touching at Coquimbo for the coals we bought for her, and accordingly addressed to us a letter, copy of which we now enclose, authorizing us to ship the same for San Francisco, and which we will do by first opportunity—recovering the amount through our San Francisco house.

Captain Ackley has drawn on you for ($4,859.1) four thousand eight hundred and fifty-nine dollars, $\frac{25}{100}$, which with the four thousand dollars drawn on you in favor of James G. King & Sons, will balance the account current of "Antelope" at this port.

Coals, at present here, are plentier, although the price has not fallen any, but should many more cargoes arrive soon we may expect a decline in price. Our Mr. Cross takes passage in the "Antelope"

for Panama, and we trust he may have the Pleasure of a personal interview.

We will dispatch the "Carlos V." on Monday, for San Francisco, with the coals transhipped from the "Duncan," and hope they will arrive in time to supply one of your steamers.

We remain, dear sir, yours respectfully,
CROSS, HOBSON & CO.

The plaintiff also read in evidence the testimony of witnesses examined at San Francisco, California, upon the commission issued in this cause on the 26th day of January, eighteen hundred and fifty-three, to wit, of Julius Garcia, who, to the following several direct interrogatories put to him by and on the part of the plaintiff, answered as follows:—

First interrogatory. What is your age, residence and occupation? What was your occupation from the first day of June, 1850, to the first day of April, 1851? Were you at any time during the said period, in the employ of the plaintiff, or of Cross, Hobson & Company, of San Francisco? If yea, when did you enter their employ and when did you leave them?

To the first interrogatory he saith: I am twenty-three years and upwards, and reside in San Francisco; by occupation consul of Peru; from June, 1850, to April, 1851, I was a clerk; from 1st August, 1850, to April, I was in the employ of Cross, Hobson & Co. and Cross & Co.; I left the latter firm in September last.

Second interrogatory. Do you remember the arrival at San Francisco of the Belgian ship "Charles Quinto," Captain Sheridan, in November, 1850? On which day did she arrive? What was her principal cargo? How much coal did she bring, as near as you can state? Do you remember the arrival of the Belgian barque "Amalia," Captain De Panro, in January, 1851? On what day did she arrive? What was her principal cargo? How much coal did she bring, as nearly as you can state?

To the second interrogatory he saith: The "Carlos Quinto" arrived in this port some time in November, 1850; I do not recollect the day; she had a quantity of coal for Law's line of steamers, and other assorted merchandise; the precise quantity of coal I do not recollect; the barque "Amalia" arrived about a month after, with a cargo consisting principally of coal; as near as I can recollect, she had about 400 tons of coal.

Third interrogatory. Was any offer or tender of coal ex "Charles V.?" to Oliver Charlick, or any other person as agent of George Law? Was it verbal or in writing, or were they made in both ways? Do you know of a letter from A. Cross, or Cross, Hobson & Co., to Mr. Charlick, dated October 28th, 1850? Was such letter sent to Charlick? If yea, state when and how it was sent. Produce a copy and say how you know it was. Did you have any conversation with Mr. Charlick at or about the time of its tender, about this coal?

Did he receive said coal on account of the plaintiff? If yea, state when. Into what did he receive it? When did he complete the discharge? Did Mr. Charlick pay for the coal? Did he or not expressly decline to pay for it? If yea, what reasons did he give for declining? Do you know of a letter from Cross & Co. to him, dated December 23, 1850? Was such letter sent to Mr. Charlick? If yea, when and where? Have you since heard him speak of having received such letter? What was the occasion of the writing of this letter? Did Charlick, before this letter was written to him, give the form of such letter as he required? Annex said letter if in your possession; if not, annex a copy, and state whether the same is a true copy. State also why you do not annex the original. Did Charlick, after receiving this letter, pay the freight, duties, and charges on coal, or any of them? If yea, which did he pay? After what rates were the freight, duty, and other charges, respectively?

To the third interrogatory, he saith: I frequently went with Captain Sheridan to Mr. Charlick's office, to push his receiving it; subsequently, the principals of the house took the matter in hand and addressed several letters to Mr. Charlick on the subject, some of which I was the bearer of; the letter marked B, dated October 28th, 1850, in Mr. Gaines' deposition, is a true copy from a copy of the original, made by myself; Mr. Charlick subsequently received the coal by some arrangement made by the house, and made a payment to the extent, I believe, of the freight, and the coal was put by him on board the ship "John Munn," to be sent, as I understood, to Mr. Law's depôt, at Realijo; I do not recollect when the coal was finally discharged, nor that Mr. Charlick ever refused payment; the letter marked G, dated December 23, 1850, in Mr. Gaines' deposition, is a true copy from the letter-book; the paper marked J, in Mr. Hooper's deposition, is a true copy of a memorandum written out by Mr. Charlick, and now in possession of Cross, Hobson & Co.; I do not know at what rate the duty and other charges were.

Fourth Interrogatory. Do you remember any offer or tender of coal, ex "Amalia," to Mr. Charlick, or any other person as agent of George Law? If yea, when was such offer or tender made? If made to any other than Charlick, state when it was made, and the name of such agent, and the reason why it was not made to Charlick. Was more than one offer or tender made? Was it verbal or in writing, or were they made in both ways? If in writing, annex a copy, or, if you cannot, then state why you cannot, and give the substance of the writing. Did Charlick, acting for said Law, receive any portion of the coal from the "Amalia?" When did he begin to receive it? Into what did he take it? Was such the usual place of received coal intended for the use of Law's line of steamers? Was such receiving stopped before the discharge of the "Amalia" was completed? When was it stopped? By whose orders or directions? Do you know if Charlick refused to receive any more of such coal? If yea, what reason did he give for such refusal? If

you state that Charlick made any objection to the coal, then state when he first made such objection. How long after arrival of the bark? How long after he had commenced receiving the coal?

To the fourth interrogatory, he saith: I do not recollect any particular tender or offer, as the business was managed by the principal of the house, but as the "Amalia" commenced discharging her coal at Law's wharf, I suppose he had agreed to receive it; subsequently, from some cause, the vessel ceased discharging, and the coal was sold at auction; further in regard to this interrogatory I know not.

Fifth Interrogatory. Look at the papers hereto annexed, marked Exhibits 1 and 2, purporting to be copies of charter parties of the "Charles V." and "Amalia," and state whether they are truly such charter parties. Were copies of them or either of them ever furnished to Charlick? If yea, when and where were they so furnished? Do you know of the genuineness of any of the papers from having seen them executed, or from knowledge of the signature? Say which of them you know to be genuine, and how do you derive such knowledge? Were they acknowledged or acted upon by the masters of the vessels by whom they were signed respectively?

To the fifth interrogatory, he saith: I have no recollection about the charter parties, as the originals were not in my keeping.

Sixth interrogatory. Do you know of a letter from Mr. Cross, to Mr. Charlick, dated 24th February, 1851? Was such letter sent to Mr. Charlick? If yea, when and how?

Have you heard Mr. Charlick mention this letter or speak of its contents? If yea, when and where?

To the sixth interrogatory he saith: A good deal of conversation and some letters passed between the house and Mr. Charlick, relative to the coal imported in the "Amalia" and "Carlos Quinto," on account of Mr. Law, but I cannot positively swear as to the delivery of this particular letter.

Seventh interrogatory. Do you know of a proposition made by Mr. Charlick to Mr. Cross on the 26th February, 1851? Was the same in writing? If yea, state in whose handwriting; annex the same to your deposition, if you have it. If you have not it, state who has it, and annex a copy. Was such proposition offered by Mr. Charlick to Mr. Cross for signature?

To the seventh interrogatory he saith: I know nothing relative to the matter contained in this interrogatory.

Eighth interrogatory. Do you know of a letter from Mr. Cross, or Cross & Co., to Mr. Charlick, dated 28th February, 1851? Was the same sent to Mr. Charlick? If yea, when and how? Have you since heard him speak of the contents of such letter? If yea, when and where? What was the occasion for writing such letter. Would Mr. Charlick pay for the coal, or the freight, or charges thereon? Did he decline, or refuse, or neglect to do so after the letter of the 28th December, 1851? Was he at the date of such last

mentioned letter, in possession of said coal or any part thereof? If yea, then state about how much he had in his possession and where he had it, and whether such place was where coal for Law's line of steamers was usually kept in.

To the eighth interrogatory he saith: From a memorandum made on a copy of the letter, dated February 28th, 1851, of which H, in Mr. Gaines' deposition, is a true copy, I can positively swear to its delivery by myself; further in regard to this interrogatory, I do not recollect.

Ninth interrogatory. Was the coal brought by the "Amalia" sold at auction? If yea, when was it sold? Was part of it in any place kept for storing coal for Law's line of steamers? What were the terms of sale? Were such terms announced before the sale? If yea, when and in what manner were they announced? What price did said coal bring on the sale? Annex an account of the sale, and state whether such is a true account thereof. What was the customary rate of auction charges at the time at San Francisco? Was any State duty payable on such coals? If yea, what was the rate of such duty? What is the customary charge for advertising?

To the ninth interrogatory he saith: The coal brought by the "Amalia" was sold at auction by S. J. Gower & Co.; the precise time I do not recollect; at the time of sale, a portion of it was in a store ship lying at Law's wharf; the coal was advertised to be sold for cash; the account marked K, in Mr. Hooper's deposition, is a true copy of the original account of sales, as rendered by Messrs. Gower & Co.; the auction charges, at the period, were from 5 to 10 per cent.; commission as agreed upon by parties, and the regular State duty; the percentage of the latter I have forgotten; the advertising was at that period 1 per cent.

Tenth interrogatory. To whom was the said coal sold? Who else, if any, was interested as purchaser there at the time of the sale, and who at the time of the actual delivery thereof? Do you know whether the purchaser was a resident of San Francisco? Had you known him before the sale? Have you seen anything of him since? When did you last see him? Do you know where he is now? Was the said coal paid for before the order for delivery thereof was obtained? What security was given for the payment, and by whom, before the order for delivery was given? Was the coal remaining in the bark "Amalia" taken out on said order for delivery? On being taken from the bark, where was such coal immediately placed? Was the coal which had been discharged from the bark before the sale removed afterwards? Do you know why it was not removed after the sale? If yea, state why.

To the tenth interrogatory he saith: I do not know the purchaser of the coal; I only know the coal was received by Mr. Charlick; further, in regard to this interrogatory, I know nothing.

Eleventh interrogatory. After delivery of the coal from the "Amalia," was any objection made to the auctioneer's bill or any

part of it? Was any objection made to the charge for demurrage? How much demurrage was actually due? From what day until what day was the bark on demurrage? Was any objection made to this charge? From whom did this objection emanate? Did it or not emanate from Mr. Charlick? Was payment of the bill refused unless a deduction was made from the charge for demurrage? What reduction was claimed from the demurrage charges? Was such reduction allowed? If yea, for what reason was it allowed?

To the eleventh interrogatory he saith: My recollections, in regard to the question proposed in this interrogatory, are rather indistinct. I only know that there was trouble in getting payment for the coal after its sale by auction.

Thirteenth interrogatory. Do you know if any part of the coal by the "Amalia," came into the possession of Mr. Charlick, or any other agent of Mr. Law, after the sale? If yea, state in whose possession the same came and where it was kept. Was the portion which had been at first discharged into the store-brig for Law's line of steamers removed afterwards? If yea, when and to what place was it removed? Was any part of the coal from the "Amalia" directly or indirectly put aboard of any steamers of Law's line? If yea, how much of it? On what steamer or steamers was it placed? What was done with any remainder of such coal ex "Amalia," remaining in the possession of the agents of Law's line of steamers?

To the thirteenth interrogatory he saith: In regard to the coal by the "Amalia," a portion of it, before the auction sale, was placed on board a store ship, lying at Law's wharf; after the sale, the "Amalia" completed her discharge at that wharf; what became of the coal afterwards I know not.

Fourteenth interrogatory. Was the coal sold on board the "Amalia," or any of it, of the same kind and quality with other lots brought to San Fancisco by the "Lady Lilford" in November, 1850, or by the "Charles V." in January, 1851? If yea, how much was of the same kind and quality as those lots? Was the price for which this coal from the "Amalia" sold, equal to the price of the best coal in San Francisco at the time?

To the fourteenth interrogatory he saith: I know nothing of the matter referred to in this interrogatory.

Fifteenth interrogatory. What was the state of the coal market at San Francisco between the first day of June, 1850, and the fourth day of March, 1851? What was the range of prices in June, 1850, and was the supply then great or small, compared with the demand? What was the range of prices in November, 1850, and was the supply then great or small, compared with the demand? What was the range of prices in January, 1851, and was the supply then great or small, compared with the demand?

To the fifteenth interrogatory he saith: My recollection, in regard to the questions propounded in this interrogatory, are too indistinct to give correct answers.

Sixteenth interrogatory. What was the usual rate of commission at San Francisco, in 1850 and 1851, for receiving goods for a party, entering them at the custom house, and passing them over to him and his agent? What was the customary auctioneer's charge or commission on sales of coals at San Francisco at said time? Was any duty payable to the State on this sale? If yea, after what rate was such duty? What was the auctioneer's customary charge for advertising at this time?

To the sixteenth interrogatory he saith: My impression is 2½ per cent. was the usual charge for simply entering goods at the custom house, and passing them over; auctioneer's commission at that period, on coal and other merchandise, was from 5 to 10 per cent.; there was a State duty of one or one and a half per cent.; I believe advertising was one per cent.

Seventeeth interrogatory. What was the invoice cost of the coal brought to San Francisco in the "Charles V.," and by whom and when was the same paid? What was the quantity of coal brought in the "Charles V.?" What was the rate and amount of the import duty payable on the coal by the "Charles V.?" By whom was the same paid and when? What was the invoice cost of coal brought to San Francisco by the "Amalia," and by whom and when was the same paid? What was the quantity of coal brought in the "Amalia?" When did the "Amalia" arrive at San Francisco, and when did her lay days expire? What was the amount of freight payable on the coal by the "Amalia?" When and by whom was such freight paid? Was any demurrage claimed by the master or officers of the Amalia?" If yea, for how many days, and at what rate per diem? What did it amount to? Was it paid? If it was paid, then state by whom and when it was paid.

To the seventeenth interrogatory he saith: I have no distinct recollection in regard to the matters contained in this interrogatory.

Eighteenth interrogatory. Was any account of purchase of coals by the "Charles V." and "Amalia," or account sales coal ex "Amalia," ever sent to Mr. Law, or ever delivered to Mr. Charlick, or any other agent of Mr. Law? If yea, annex a copy thereof, and state if the same is a true copy. Had the balance due by Law on such account ever been charged by Cross & Co. to Alexander Cross? If yea, when? Has Alexander Cross consented to be charged with such balance? Was he aware of the charge at the time? Has he objected to it? Look at the account current hereto annexed and marked Exhibit No. 3, and say whether the same, or a copy thereof, was ever sent to the defendant, George Law? If yea, how and when was the same sent to him? and was it ever delivered to any agent of said Law, or to any one on his account? If yea, to whom was it so delivered, and when was it delivered?

To the eighteenth interrogatory he saith: I know nothing of the matters contained in this interrogatory.

Nineteenth interrogatory. Was any draft made by Alexander Cross, or Cross & Co., on the defendant, for any part of the amount due on such account? If yea, in whose favor was such draft made? When and for what amount was it drawn? Was it paid or protested? Do you know of any demand made of Law or Charlick, or any other agent of Law, for the balance of such account, or any part thereof? When and of whom was such demand made? Has Law paid it or any part of it?

To the nineteenth interrogatory he saith: I know nothing of the matters contained in this interrogatory.

Twentieth interrogatory. Do you know of certain letters, viz.: letters dated at San Francisco, and written by Cross, Hobson & Co., to O. Charlick, October 28th, 1850; Alexander Cross to George Law, November 28th, 1850; Cross & Co. to George Law, November 29th, 1850; Cross & Co. to O. Charlick, December 23d, 1850; Alexander Cross to George Law, January 15th, 1851; Alexander Cross to George Law, February 15th, 1851; Alexander Cross to E. H. Ackley, March 12th, 1851; Cross & Co. to Willis & Co., March 21st, 1851; Alexander Cross to O. Charlick, February 24th, 1851; Cross & Co. to O. Charlick, February 28th, 1851? Were the said letters sent or delivered to the persons to whom they were addressed respectively? If yea, state how and where each letter was sent or delivered, and annex copies of them; and state whether such copies are true copies. Were any papers enclosed in the letter of October 28th, 1850, from Cross, Hobson & Co. to Charlick. If yea, what were such papers? Annex copies of them if you can; if you cannot, then state why you cannot.

To the twentieth interrogatory, he saith: Various letters were written by the house to Mr. Law and Mr. Charlick, relative to the business between them, some of which I copied and handed to Mr. Charlick myself; I have seen the copies in Mr. Gaines' deposition, marked B, C, D, E, F, G, H, and I, and believe them to be true copies.

Last Interrogatory. Do you know any other matter or thing of benefit or advantage to the plaintiff herein? If yea, declare the same fully, as if specially interrogated thereunto.

To the last interrogatory he saith: I know nothing further.

The defendant then read in evidence the cross-interrogatories put to the said Julius Garcia on said examination under the last mentioned commission, which cross-interrogatories and answers are as follows: —

First Cross-Interrogatory. During what period or periods of time, where, and in what capacity (if at all) were you in the employ of the plaintiff, or the plaintiff and others associated with him?

To the first cross-interrogatory, he saith: From the 1st August, 1850, to September, 1852, I was in the employ of Cross, Hobson & Co. and Cross & Co., as Spanish and custom house clerk.

Second Cross-Interrogatory. How (if at all) did you ascertain the amount of the cargo of coal mentioned in the direct interrogatory, brought by the ship "Charles Quinto?"

To the second cross-interrogatory, he saith: I know nothing of the matters contained in this interrogatory.

Third Cross-Interrogatory. Were either of you, and, if so, which, at any time a copartner with the plaintiff, or with the plaintiff and others? If yea, during what period or periods of time, and in what business? And if a copartner with plaintiff and other persons, name the other persons.

To the third cross-interrogatory, he saith: I never was a partner with the plaintiff or plaintiff and others.

Fourth Cross-Interrogatory. If you have stated that you had a conversation with Oliver Charlick about the cargo of the "Charles V." state when, where, and in the presence of whom did it occur.

To the fourth cross-interrogatory, he saith: I have not referred to any particular conversation with Mr. Charlick.

Fifth Cross-Interrogatory. What person composed the copartnership firm of Cross & Co. When, as near as you can state, was such copartnership formed, and when was it dissolved? What persons composed the copartnership of Cross, Hobson & Co.? When, as near as you can state, was such last mentioned copartnership formed and when was it dissolved?

To the fifth cross-interrogatory, he saith: The copartnership of Cross & Co., I believe, was composed of Alexander Cross, William Hooper and David Thomas, and the same persons, with Joseph and William L. Hobson, composed that of Cross, Hobson & Co.; when their copartnership was formed and dissolved I do not recollect.

Sixth Cross-Interrogatory. If either of you state that you were in the employ of Cross, Hobson & Co., which of you were so employed? In what business, where, and in what capacity? And was your compensation by salary, commission, or an interest in the business.

To the sixth cross-interrogatory, he saith: I was a Spanish and custom house clerk to Cross, Hobson & Co., receiving a brokerage on custom house entries, from August 1, 1850, until the dissolution of the firm.

Seventh Cross-Interrogatory. If you state that any other person than the nominal purchaser of the cargo of the "Amalia" was interested in such purchase, state what such interest was, and how you derived the knowledge that such other person or persons was or were interested. If you state that Mr. Charlick objected to the charge for demurrage on the bark "Amalia," state, as near as you can, the language in which he made such objection; the person or persons other than yourselves, if any, in whose presence, the time when, and the place where such objection was made.

To the seventh cross-interrogatory he saith: I know nothing of the matters contained in this interrogatory.

Eighth cross-interrogatory. If you state that any of the coal from

the bark "Amalia" came into the possession of any agent of Mr. Law, state how you know the fact, and if from conversation, state the same, as nearly as you can, and the persons in whose presence, other than yourselves (if any), the time when, and the place where the same occurred.

To the eighth cross-interrogatory he saith: The bark "Amalia" was hauled into Law's wharf, and a portion of the coal, to my knowledge, having frequently gone to the wharf, put in a receiving hulk belonging to Mr. Charlick or the line of steamers; I also saw from time to time the discharge of the "Amalia" going forward at that wharf.

The plaintiff also read in evidence a letter from said Cross, Hobson & Co., to Mr. Oliver Charlick, referred to in above commission as letter B, of which the following is a copy:—

San Francisco, 28th Oct., 1850.

Oliver Charlick, Esq., present—

Dear Sir: Our Valparaiso firm, acting on an order from Mr. George Law, dated New York, May 28th last, as follows: "I want you to purchase me two cargoes of coal afloat, and send it to San Francisco as soon as possible. Consign it to your house there, for me, payable at San Francisco, on delivery there. Get as many lay days as you can at San Francisco, in order that I may use it on board of the steamers and save cost of landing it. Advise Mr. Henry Tracy, my agent at Panama, as soon as this coal is shipped, in order that he may advise Mr. Oliver Charlick, my general agent, who has charge of running the steamers on the Pacific"—forwarded per British bark, "Lady Lilford," 500 tons, on the 20th August, the invoice amounting to $15,763 75, which vessel is now due, and were further transhipping ex "Duncan," to the Belgium ship "Charles V.," 440 tons more, to sail about 10th September, from Valparaiso, bought @ $12; freight, $16. We hand you a copy of her charter, and of our advice to Mr. Tracy, at Panama, of 29th July, for your government. Copies of same and of invoice were also sent to Mr. Law; we also expect 350 tons further, from Coquimbo, in a short time (when a vessel could be chartered reasonably), for you, which we purchased for the "Antelope," previous to arrival, as ordered by Mr. Law, and which Captain Ackley could not conveniently take in that port, without losing much time to the steamer, as explained in his letter to us, of which we sent forward a copy to Mr. Law, and which you can learn from the captain.

The lots per "Lady Lilford" and "Charles V." do not amount to complete cargoes, and thus this will fill them. These matters we mention in order that you may make your arrangements, as we understand, by what occurred verbally, that our advice to Mr. Tracy had not reached you.

As, at the time of Mr. Law's giving the above order, we were supposed to be the agents of his steamers in this port, which you have

since assumed, we will thank you to inform us whether you will receive and pay for said coals accordingly, not doubting that the above you will find confirmed to you by Mr. Law's correspondence.

We may mention, that the only coals for which our Valparaiso house drew on New York, as requested (or rather, which the captains drew for), were those supplied the steamers "Republic" and "Antelope," on calling at that port; those for Panama and San Francisco being payable by the agents at said ports, on receipt, as per Mr. Law's stipulation in the order.

We are, dear sir, your obedient servants,

CROSS, HOBSON & CO.

The plaintiff then read in evidence a letter from Cross & Co., referred to in said last mentioned commission as letter G, to said Oliver Charlick, of which the following is a copy:—

San Francisco, 23d December, 1850.

O. Charlick, Esq., Agent for Law's Line of Steamers.

Sir: Of the coal sent on by our Valparaiso house, under Mr. Law's order of 28th May, as apprised the agencies here and at Panama previously, there are now here, on board the Belgian ship "Charles V.," 400 tons, which arrived on 24th ultimo, of which we handed you the invoice and charter party. As you seem to think you might incur some censure in receiving them, we beg to say, that it is all right, and you will oblige us, and save expenses to all parties, by receiving the coal and paying sixteen dollars per ton; the balance may remain subject to the decision of Mr. Law.

We are, sir, yours truly,

CROSS & CO.

The plaintiff also read in evidence another letter from Alexander Cross to George Law, referred to in said last commission as letter D, of which the following a copy:—

San Francisco, 15th Jan., 1850.

George Law, Esq., New York.

My dear Sir: Having been given to expect the pleasure of meeting you soon here, I did not write you since my respects of 28th November. Have no letters from you at all. Your line will, of course, be much benefited by your presence, and I trust you will arrange with the agents of the Royal Mail Co., at Panama, so as to give through bills of lading for specie from San Francisco to London, and enable us to use your line with remittances ordered. All the coals advised you from Valparaiso have arrived. Mr. Charlick objects to the construction we put on your order, but will not give any written or clear reason in reply to the notice we gave him. The "Charles V." lay here a month before he would resolve, or, indeed, agree to take them, and then she was on demurrage before finishing her discharge. We relieved his scruples, by begging him to pay the

$16 per ton (freight), and leave the rest to you. From some mistake, there is 50 tons short of the 400, for which the captain signed a clean bill of lading, which we will have settled and account to you for. The "Amalia" arrived on 8th, with 438 tons; the invoice amount is $6,120, not $6,374 50, we estimated on drawing; the difference—$254 50—is passed to your credit. We have asked Mr. Charlick to take these and pay the $17 freight, which we hope he will do, although, as usual, he will not reply definitely. Captain Ackley is here, and explained his position when in Valparaiso, and the time saved by not going to Coquimbo; but, without counting his lot, the three lots amount to 492, 350, 438=1280 tons only, against your order for two cargoes. Your orders were directed to me, and I am therefore responsible to Cross, Hobson & Co., who executed them with their money. Had it not been apparently most convenient to the line to pay here on delivery, they would have drawn from Valparaiso on you. At the time these coal left Valparaiso, the quotations from San Francisco were $40. If they are now low, all the better for the line, who should take advantage of the fact to lay in a good stock. In all I have done for you, I need only repeat, that I have taken the liveliest interest. I have reconciled matters between your agent and the captains who had just claims for demurrage, and you have not paid above $125 through us against a great deal more due them.

Believe me, my dear sir, your faithful servant,

ALEXANDER CROSS.

The plaintiff also read in evidence another letter from said Cross & Co., to said Oliver Charlick, referred to in said commission as letter H, of which the following is a copy:—

San Francisco, February 28th, 1851.

O. Charlick, Esq., Agent for Law's Line of Steamers.

Sir: We beg to notify you that the lay days of the Belgian bark "Amalia" have expired, which has placed her on demurrage @ $40 per day. The invoices, bills of lading charter party, and captain's notification were duly handed you on the ship's arrival, 8th and 9th ult., and still remain in your possession. We have entered the coal and advanced the duty, by your request. Having no funds of your line in our hands with which to pay this and the freight, and your declining to receive the coal, unless by our abandonment of our claims for the original cost, we have no resource left, but to sell the same by auction for account of Mr. Law. We would call your attention to the loss which would ensue to the line by thus disposing of these coals at the present unfavorable moment. You have been repeatedly made aware that they comprise the completion of Mr. Law's order of 28th May, for two cargoes from Valparaiso, with that provided for the steamer "Antelope" on shore, previous to her arrival, in August, in Chili. Our Valparaiso house are still in advance for the invoice costs of this and the coals per "Charles V.," for which we

and they look to Mr. Law for payment, as also for any deficiency required to complete the freight. Since our letter of the 28th October, we have not asked you to pay more than the freight for said lots. As you read the terms of the order, the cost was to be drawn on New York, and not paid here.

Your obedient servants,

CROSS & CO.

The plaintiff then read in evidence the testimony of Thomas J. Poulterer, one of the witnesses examined at San Francisco, under said last mentioned commission, who, to the several direct interrogatories put to him by and on the part of the plaintiff, answered as follows:—

First interrogatory. What is your age, residence and occupation? What was your occupation from the first day of June, 1850, to the first day of April, 1851? Were you at any time during the said period in the employ of the plaintiff, or of Cross, Hobson & Co., of San Francisco? If yea, when did you enter their employ and when did you leave them?

To the first interrogatory he saith: I am thirty years of age and upwards; reside in San Francisco; by occupation, an auctioneer; except in the way of business, I have never been in the employ of Cross, Hobson & Co.

Ninth interrogatory. Was the coal brought by the "Amalia" sold at auction? If yea, when was it sold? Where was the coal sold? Was part of it in any place kept for storing coal for Law's line of steamers? What were the terms of sale? Were such terms announced before the sale? If yea, when and in what manner were they announced? What price did said coal bring on the sale? Annex an account of such sale, and state whether such is a true account thereof. What was the customary rate of auctioneer's charges at the time at San Francisco? Was any State duty payable on such coals? If yea, what was the rate of such duty? What is the customary charge for advertising?

To the ninth interrogatory he saith: The cargo of coal brought by the "Amalia," a part of which had been discharged into a storeship at Law's wharf, was sold by S. J. Gower & Co., of which I was a partner, and the selling auctioneer, on the 4th of March, 1851, at $7 75 cash per ton, with six days free charge for delivery, as announced at the time of sale, as also in the daily newspapers, at $40 per day for demurrage for any further time taken. The account of sale marked K, in Mr. Hooper's deposition, is a true copy from the original; the customary rate of auction charges at San Francisco was then 7½ per cent. selling commission, and the State duty 1½ per cent., and advertising one per cent.

Tenth interrogatory. To whom was the said coal sold? Who else, if any, was interested as purchaser there at the time of the sale, and who at the time of the actual delivery thereof? Do you know

whether the purchaser was a resident of San Francisco? Had you known him before the sale? Have you seen anything of him since? When did you last see him? Do you know where he is now? Was the said coal paid for before the order for delivery thereof was obtained? What security was given for the payment, and by whom, before the order for delivery was given? Was the coal remaining in the barque "Amalia" taken out on said order for delivery? On being taken from the barque where was such coal immediately placed? Was the coal which had been discharged from the barque before the sale removed afterwards? Do you know why it was not removed after the sale? If yea, state why.

To the tenth interrogatory he saith: The coal was sold or bid off by a Mr. Bessey; I did not know the nominal purchaser, Mr. Bessey, nor of his place of residence, and do not recollect of having seen him since, nor do I know where he is now; the order for the delivery of the coal was given by Cross & Co., the buyer having placed in their hands Wells & Co.'s guarantee letter; after the sale of the coal, I know nothing of the disposition of it, but understood it was discharged on Law's wharf.

Eleventh Interrogatory. After the delivery of the coal from the "Amalia," was any objection made to the auctioneer's bill, or any part of it? Was any objection made to the charge for demurrage? How much demurrage was actually due? From what day until what day was the barque on demurrage? Was any objection made to this charge for demurrage? From whom did this objection emanate? Did it or not emanate from Mr. Charlick? Was payment of the bill refused unless deduction was made from the charge for demurrage? What reduction was claimed from the demurrage charged? Was such reduction allowed? If yea, for what reason was it allowed?

To the eleventh interrogatory he saith: Cross & Co. having given the order for the delivery of the coal, and not being able to collect the amount after the delivery, I went with Mr. Cross to Wells & Co., who said they could not pay the four or five days' demurrage charged in the account, although he saw it was done under the terms of the sale; Mr. Wells promised to see Mr. Charlick, and afterwards Cross & Co., I understood, threw it off, rather than litigate; I am aware that Messrs. Cross & Co. addressed a strong letter to Wells & Co., complaining of a want of good faith.

Thirteenth Interrogatory. Do you know if any part of the coal by the "Amalia" came into the possession of Mr. Charlick, or any other agent of Mr. Law, after the sale? If yea, state in whose possession the same came, and where it was kept. Was the portion which had been first discharged into the store-brig for Law's line of steamers removed afterwards? If yea, when and to what place was it removed? Was any part of the coal from the "Amalia" directly or indirectly put on board of any of the steamers of Law's line? If yea, how much of it? On what steamer or steamers was it placed? What was done

with any remainder of such coal ex "Amalia" remaining in the possession of the agents of Law's line of steamers?

To the thirteenth interrogatory he saith: I do not know what became of the coal after its discharge at Law's wharf, or what steamer it was placed in.

Fourteenth Interrogatory. Was the coal sold on board of the "Amalia," or any of it, of the same kind and quality with other lots brought to San Francisco by the "Lady Lilford," in November, 1850, or by the "Charles V." in January, 1851? If yea, how much was of the same kind and quality as those lots? Was the price for which this coal from the "Amalia" sold equal to the price of the best coal in San Francisco at the time?

To the fourteenth interrogatory he saith: The coal by the "Amalia" was sold @ $7 75.

Fifteenth Interrogatory. What was the state of the coal market at San Francisco between the first day of June, 1850, and the fourth day of March, 1851? What was the range of prices in June, 1850, and was the supply then great or small, compared with the demand? What was the range of prices in November, 1850, and was the supply then great or small, compared with the demand? What was the range of prices in January, 1851, and was the supply then great or small, compared with the demand?

To the fifteenth interrogatory he saith: The price of coal at San Francisco, from June, 1850, to March, 1851, varied considerably, as far as my recollection extends; the article was in demand during the first half of that period, and brought $30 to $40 without much difficulty; towards the end of 1850 the importations were large and sales difficult, and the quoted prices nominal; such sales as were made were forced, and the result ruinous to importers; in June, 1850, I think coal was $35 to $40--the supply being light; in November following, $30 to $20, and declining with increasing stock; in January, nominally to $10 to $15.

Sixteenth interrogatory. What was the usual rate of commission at San Francisco, in 1850 and 1851, for receiving goods for a party, entering them at the custom house, and passing them over to him or his agent? What were the customary auctioneer's charges or commissions on sales at San Francisco, at said time? Was any duty payable to the State on the sale? If yea, after what rate was such duty? What was the auctioneer's customary charge for advertising at this time?

To the sixteenth interrogatory he saith: I know not the charge for passing goods through at the custom house; the customary auctioneer's charge on coal and other merchandise was 10 per cent. in 1850, and 7½ per cent. in 1851, and the duty payable in 1851 to the State 1½ per cent. on the amount of the sale, and for advertising 1 per cent.

Last interrogatory. Do you know of any other matter or thing of

benefit or advantage to the plaintiff herein? If yea, state the same fully as if specially interrogated thereunto.

To the last interrogatory he saith: I know not.

The defendant then read in evidence the cross-interrogatories put to the said Thomas J. Poulterer, on said examination under the last commission, which cross-interrogatories and answers are as follows:—

First cross-interrogatory. During what period or periods of time, and in what capacity (if at all) were you in the employ of the plaintiff, or the plaintiff and others associated with him?

To the first cross-interrogatory he saith: I never was in the employ of the plaintiff.

Fifth cross-interrogatory. What persons composed the copartnership firm of Cross & Co.? When, as near as you can state, was such copartnership formed, and when was it dissolved? What persons composed the copartnership of Cross, Hobson & Co.? When, as near as you can state, was such last-mentioned copartnership formed, and when was it dissolved?

To the fifth cross-interrogatory he saith: I know nothing of the matters referred to in this interrogatory.

Sixth cross-interrogatory. If either of you state that you were in the employ of Cross, Hobson & Co., which of you were so employed? In what business, where, and in what capacity? and was your compensation by salary, commission, or an interest in the business?

To the sixth cross-interrogatory he saith: I have never been in the employ or connected with the plaintiff.

Seventh cross-interrogatory. If you state that any other person than the nominal purchaser of the cargo of the "Amalia" was interested in such purchase, state what such interest was, and how you derived the knowledge that such other person or persons was or were so interested. If you state that Mr. Charlick objected to the charge for demurrage on the bark "Amalia," state, as near as you can, the language in which he made such objection; the person or persons, other than yourselves (if any), in whose presence, the time when, and the place where such objection was made.

The defendant read only part of the answer of said Poulterer to this cross-interrogatory as follows: I had no conversation with Mr. Charlick

Eighth Cross-Interrogatory. If you state that any of the coal from the bark "Amalia" came into the possession of any agent of Mr. Law, state how you know the fact, and if from conversation, state the same, as nearly as you can, and the persons in whose presence, other than yourselves (if any), the time when, and the place where the same occurred.

To the eighth cross-interrogatory he saith: I have no positive knowledge that the coal was actually used in Law's steamers, having no conversation with his agent about the matter.

(Here the Plaintiff rested.)

Defendant's counsel hereupon moved the court that the letter written by said Enoch H. Ackley to Cross, Hobson & Co., and so as aforesaid read in evidence on the part of the plaintiff, be stricken out from the proof.

The judge denied said motion, to which the defendant's counsel excepted; and hereupon the defendant, to maintain and prove the issues on his part, introduced and read in evidence the deposition of said Enoch H. Ackley, taken *de ben esse*, before a commissioner of this court, on the 10th February, 1853, as follows:—

I resided, on the 25th of January, 1853, at Nantucket, more than a hundred miles from this city, and have resided there since, and still reside there; I am a commander at sea; have been a commander of a steamship; I was last commander of a steamship running between San Francisco and Panama, on the Pacific side; I expect to take command of a steamship running between the port of New York and Aspinwall, or between New Orleans and Aspinwall; on the 30th of August, 1850, I was in command of the steamship "Antelope;" I was at that time at Valparaiso, on my way from the port of New York to Panama, to take my place in Law's line of steamships from Panama to San Francisco; I was in command of the "Antelope" by the employment of George Law, and he was the only person whom I knew in regard to the matter; I sailed under written instructions; I had also a letter of credit; they were signed by George Law; the papers marked A and B are the written instructions and letters of credit I refer to; I had no other instructions or authority from Mr. Law, or anybody else, under which to act during that trip; I left the port of New York on the 18th of May, 1850; I arrived at Valparaiso, I think, on the 30th of August; on my arrival at Valparaiso, I applied to Mr. Cross for coal for the steamship "Antelope;" he replied that he had coal provided for me at Coquimbo; Coquimbo is about five hundred miles (a little more or less) down the coast from Valparaiso; I refused to take the coal at Coquimbo, for the reason that my instructions were always to take coal afloat, if possible, and also, in consequence of my having repairs to be done to the ship, which could not be done at Coquimbo, but which could be done at Valparaiso, and time would be saved by loading the coals while repairs were being done; I communicated these reasons to Mr. Cross; Mr. Cross had no coal provided for me afloat at Valparaiso; in that difficulty, I told him that there was coal afloat at Valparaiso, and requested him to purchase some, even at an advanced price upon what he paid for the coal at Coquimbo; the coal I meant was on board the barque "Margaret;" I took at Valparaiso about three hundred and thirty tons of coal, for which I settled with Mr. Cross; I gave him a draft on Mr. Law; I recollect writing a letter to Messrs. Cross, Hobson & Co., in reference to

sending coal to San Francisco for account of Law's line; the date of it was about the 30th of August, 1850.

Q. What induced you to write that letter?

A. From Mr. Cross' representations to me, that coal was very high and scarce at San Francisco.

Objected to.

Q. Had you any authority to purchase coals, or to direct coal to be sent to San Francisco or any other place for account of Law's line?

Objected to.

A. No, sir; except what I required for my own consumption on my trip to Panama.

Q. Do you know whether Mr. Cross was informed of that fact?

A. I informed him of it.

Q. Did you, at that time, know anything of the state of the coal market, either at San Francisco or other places where coal was exporting?

A. Only what information I obtained from Mr. Cross.

Q. At what time did you communicate to Mr. Cross that you had no authority to purchase coal?

A. About the time I wrote the letter to Messrs. Cross, Hobson & Co., which I only wrote at his request,

Q. Was there any understanding between you and Mr. Cross, as to whether the letter written by you should be regarded as a letter of authority in reference to the purchase of coal or sending coal to San Francisco?

Objected to.

A. Yes, sir; there was an understanding that I had no authority; he only requested me to write him, as a matter of my opinion, and that I gave upon the information Mr. Cross had communicated to me.

Cross-Examined.

Q. Did you stop at Chiloe?

A. Yes, sir.

Q. For what purpose?

A. For the purpose of obtaining wood, supplies, and provisions; it is five or six days' sail south of Valparaiso.

Q. Were you entirely out of supplies which you required?

A. I was; I went in there from necessity, to obtain wood.

Q. Was any authority given you, in your instructions, to stop at Chiloe?

A. No, sir.

Q. What sort of coal was the "Margaret's" coal?

A. The captain told me it was Scotch coal, and I bought it for Scotch coal; I don't know whether there was any more of that quality or kind in the market at the time; I can't say how much per ton I paid—I think about fourteen dollars; I don't know when the

"Margaret" arrived at Valparaiso; I found her there when I got there; I suppose that was dearer than the Coquimbo coal; I don't know what Mr. Cross paid for it; I was not able to take on board the whole of the "Margaret's" cargo; we left some on board of the "Margaret," but what quantity I don't know; I don't know whether there was any other coal of any sort in Valparaiso at the time, except the "Margaret's" cargo.

Q. If you could not have procured any coal at Valparaiso what would you have done?

Objected to.

A. I should have been obliged, from necessity, to have gone to Coquimbo; I got out of fuel before arriving at Valparaiso, from having a very long and tedious passage from the Straits of Magellan onward to Valparaiso; if I had not been obliged to stop, and got out of fuel, I should have arrived at Valparaiso thirty or forty days sooner than I did; I arrived at Valparaiso the 29th or 30th of August; I had received no extraordinary damage; I went to Panama, and from there to San Francisco; I left San Francisco to return on the next voyage to Panama, on the 12th of November; I could not tell when I next left San Francisco; Mr. Law gave me the letter of instruction on the 18th day of May, 1850, the very day I sailed; Mr. Law had no conversation with me as to my management of the vessel and conduct on the voyage, that I recollect of; he might have said something to me by way of caution, but something very trifling.

Q. Was it or not understood between Mr. Law and yourself, that in cases of necessity you might deviate from his letter of instructions?

A. There was nothing said in regard to the matter; I stopped at Valdivia in consequence of a storm, not being able to get steam enough, with wood, to propel the vessel against the storm; I anchored twice or three times in the Straits of Magellan; the steamship of which I expect to take command is in the United States Mail Steamship Line, in which Mr. Law is an owner, or the man who promised me employment.

Direct resumed. I wrote but one letter to Cross, Hobson & Co., on the subject of sending coal to San Francisco.

ENOCH H. ACKLEY.

Sworn before me Feb. 10th, 1853. J. W. NELSON,
U. S. Commissioner.

The defendant thereupon read the two letters referred to in this deposition, marked A and B, which are as follows:

New York, May 18th, 1850.

Captain E. H. Ackley.

Dear Sir—You will take command of the steamer "Antelope," and proceed, at 3 o'clock P. M., to-day, on your voyage to San Francisco, touching at Rio, Valparaiso and Panama, for coals and such supplies as may be necessary for the ship's use. At Rio you will take on say about 350 tons of coal. Be careful and have it well trimmed, so as

the ship's hold will contain that amount. At Rio you will consign the vessel to the firm of Maxwell, Wright & Co.; at Valparaiso you will consign the vessel to Alexander Cross. You will draw bills on me in their favor for the coals and expenses required for the ship at either of these places. Be sure and get the best coals. The Welsh is the best English coal, and the Lackawanna the best American anthracite coal. You will not probably be able to obtain the latter, except you get it at Rio, and the Welsh coals may be scarce and high; if so, you will have to take the next best. Captain Wood paid $8 50 per ton at Rio for the steamer "Isthmus." It was screened and put on board. It was an excellent quality of Scotch coal. It is well always to include the putting it on board in tne price agreed upon per ton, and also the screening of the coal, if it is necessary to have it screened; and bind them always to put the coal on board within a specified time; and bind them to pay a forfeit of $200 a day for every day they delay the ship after the time has elapsed for putting it on board. As to the quality of the coal the engineer will assist you in determining, and take a fair look through the market before you purchase. If you can get it afloat, it is as good a way to buy it, as coal is always injured by the number of times it is handled. Be particular in getting weight. Coal always sells at the gross ton of 2240 lbs. Specify this in your purchase. When you buy coals in second hands, they always give short weight, unless well watched. You have now on board about 320 tons gross. You must make it hold out to Rio; and, to do so, you must make the engineer use so much on each watch; this he can do by weighing his buckets, and using so many buckets on each watch; and make him keep a correct account of it on his slate, and return the amount consumed in each watch to you once every twenty-four hours; also the amount of tallow and oil consumed; and make him keep regular steam, so as to consume about 10 tons of coal in 24 hours, unless you find by the distance you are making, that the quantity you have on board will allow you to use more; if so, you can use about 12 tons; or, if you find, by the distance you are making, you are consuming your coal too fast, then you must cut down the quantity of your daily consumption so as to make it hold out. Use your sails as much as you can, whenever you can derive any benefit from them. Select out a regular set of men for the wheel, and let them steer her all the time, as they will do better the longer they become used to it. In rough weather, you must slack up your steam, as you find it necessary to ease the ship. I am very desirous that you make a good passage, and this is best done by keeping the ship regularly at her work, and taking the best advantage of the wind, and making short stops in port. Never allow them to drive the fire at one time and let it off at another. This endangers machinery, wastes coal, and produces no good result. Make them keep a regular head of steam the 24 hours, unless in a storm. Save your fresh water for drinking, and make the steward

keep a regular account of what is used, also of the provisions and supplies, and report it to you every 24 hours. Your crew is not used to long passages, and therefore it will be necessary that you require regular daily reports from the different departments, of everything that is used on board the ship. This will learn them to know what they are consuming, and how much is left, and make them more useful in the business of carrying of passengers on the Pacific. You may take passengers at Rio (if any offer) to Valparaiso or to Panama. You may take passengers from Valparaiso to Panama; but don't take any steerage passengers to go to San Francisco, as all these tickets will be sold here. You may take thirty cabin passengers from Valparaiso to San Francisco, increasing the price of tickets according to the distance. Make the steward air his bedding and bed clothing in good weather; and make him keep everything clean and in good order. Make the crew keep their proper places, and use only the beds and bedding allotted to them; and if you get any passengers, allow them to occupy only one bed each; have all the rest kept clean and in good order, until you get to Panama, where they will be all wanted. As you consume the coal out of the hold, put a sufficient quantity of the freight below—such as will not injure by heat—to keep the ship in good sailing trim, and make them use the coals so as to keep the ship on an even keel; also be particular and make them use the coal so as not to leave the ends of the ship overloaded. As coals will probably be scarce and high at Panama, you will take all on you can carry at Valparaiso; the weather being good on the Pacific, there is no danger of overloading the ship. If you find at Valparaiso that you can obtain coals at Callao at reasonable rates, it may be well for you to go in there and fill up with as much coal as you can carry. It will also be well for you to purchase say 20 or 30 barrels of flour of the best quality; also some pork and beef, and some vegetables, if they will keep, and such other groceries and supplies for passengers as may be necessary for the ship's use from Panama to San Francisco. If you find any of the ports that you touch at unhealthy, keep your men on board, and hire the native laborers of the country to trim your coals and row your boats, and such work as subjects the men to fatigue and the sun. You will be particular and see that the fire-hose is screwed on to the water-pipes, and that the buckets are all filled with water every evening at 6 o'clock; and have daily regular examinations throughout the ship, to see that everything is in proper order. Have the lights put out at 10 o'clock, and burn as few as possible at any time. Herewith I hand you a letter authorizing you to draw on me in payment for the bills required for the ship. Such bills you will always be particular and have forwarded to me at the time you make the draft, keeping always a duplicate of each bill yourself on board the ship. You will have no clerk until you arrive at Panana. I will send one to join you there. Very respectfully yours,

GEORGE LAW.

New York, May 18th, 1850.

Captain E. H. Ackley, steamer "Antelope."—

You are hereby authorized to draw on me at three days' sight, in payment for any bills for coals or other expenses that may be necessary for the steamship "Antelope," on your present voyage from New York to Panama. Such bills will be duly honored by me. You will be particular to forward account of disbursements.

Very respectfully yours,

GEORGE LAW.

The defendant then read in evidence a letter from Alexander Cross to George Law, of which the following is a copy:—

Panama, 8th February, 1850.

George Law, Esq., New York.

Dear Sir: I had the pleasure of writing you on board the "Falcon." Captain Hartstein set me ashore immediately on our arrival at Chagres, and I pushed through in thirty-four hours, day and night, but reached too late for steamer. She sailed as early as seven o'clock and arrived before three P. M. on the 27th. I wish we had an American line south. The government should provide for the U. S. Mail, which is always too late here. I more regret this detention (until the 27th), as the "Isthmus" should arrive before me, now, my earliest day in Valparaiso being 24th March. I will, perhaps, see her still, as she is small for many days' cost, and I will attend to her. Coming on express, I could not keep with my baggage, and, anticipating this, I desired Captain Hartstein to send on the box of doubloons (which was transferred from the "Ohio" to Mr. Wetmore, clerk of the "Falcon"), for me at Valparaiso, to your agent, Mr. Charlick, here. This gentleman had gone over to Chagres, and said by some to have gone on to Havana and New York, but I cannot find any deputy he has left; though I have hunted for a certain Mr. Gallagher, up to this time, in vain, whose name figures on "Georgia's" bills of 5th inst. I have, therefore, to-day sent carefully, through Smith & Lewis, my friends of this place, to be sent to their agent, Los. Parades, of Chagres, the two letters for Mr. Charlick which you entrusted me with; also, a few lines requesting his sending on the specie carefully to said S. & L., to be held at my disposal here, and shipped with me on 27th, for Valparaiso. Should Mr. C. not be in Chagres, I address the letter to Captain Hartstein, or Captain of "Georgia"—failing these, to your good self, in order that you may ascertain to whom said specie was delivered, if delivered, for I took no charge, gave no receipt, nor have I heard a word from Chagres since I left the "Falcon" in such a hurry. She of course would push back at once, and in the confusion it may have remained on board, in which case it is all safe. It would be for your interest, when your Panama agent is required to look after

Chagres business also, that he has an established house here to represent him, as has Capt. Stout, of H. & A., in Zachuson, Nelson & Co. They are full of business, and could not, perhaps, serve your boats well without clashing with H. & A.'s line. The house of Smith & Lewis are equally respectable, experienced and attentive, and in case you are of my opinion, and find it expedient to give them this agency, you will find that they can serve you effectually.

Coals have been sold at $20 here, in cargo, to Folger, agent of Howard, who has 700 tons provided. The other company have eighteen months' supply arrived, and at Taboga, in Valparaiso, $7½ @ $9 in cargo, by last accounts. In second hands $35 is charged in Panama, and 10 @ $15 in Valparaiso. At San Francisco, they are quoted at $40, and fair supply.

Passengers. The "Oregon" took down 278; "California" brought up 230. There are 30 @ 50 left behind, which did not arrive at Chagres in time for the "Cherokee," &c., and so the "Georgia" should have 260 or more; a good commencement. With best wishes,

I am, dear sir, yours truly,

ALEXANDER CROSS.

The defendant also read in evidence another letter from said Cross to said George Law, of which the following is a copy:—

Panama, 26th February, 1850.

George Law, Esq., New York.

Dear Sir: We start to-morrow for Valparaiso, and it may be yet time enough still for "Isthmus." I congratulate you on the prosperous trips of the "Ohio," "Falcon," and "Georgia." Mr. Charlick, I see, has gone to New York, and it is likely the "Falcon" took back the box doubloons, as she left Chagres immediately, and it has not been sent here by Mr. Wetmore or Captain Hartstein. If safe, all right. I have been sending inquiring for it all this month, and last night gave Mr. Corble (the only one I have since met of your service), of "Georgia," a memorandum to look after it. Had I brought it with me, it might have shared the fate of my desk, which I got again, broken, minus papers, watch, &c.

Should you decide on sending us money, do so through Messrs. Smith & Lewis here, under cover, to which address your letters for Valparaiso. If they come loose, they may be lost here, or not forwarded, as 25 cents each is demanded by Br. steamer for transient letters. Do get up an American Southern Line. Competition is wanted. Coals are at $8½ at Valparaiso—$20 here, and 30 @ $40 San Francisco. We should be repaid out of passengers for coals; where should we send the surplus, in absence of Mr. Charlick here? W. L. Hobson will be with you from Valparaiso in a month after this. Your friend, Collier, is too stringent all at once, and will have a number of suits against him for precipitate seizures. Tell him to be less violent in a place which has been going on in such an irregular man-

ner for so many hundred years. It looks like a game of "grab." There is such a thing as overdoing one's duty. Give Sanders my regards. I have no letter from him; "Empire City's" mail not in yet. A well-advised house here is your best agent, and will stop the many lies and false statements always circulated where different interests are concerned. This I regretted to notice in the case of the "Georgia" while detained. Order our express through, immediately she reaches Chagres, and also send bills in anticipation. If possible, send a telegraph for "Isthmus."

Yours truly,
ALEXANDER CROSS.

I wrote you some days ago.

The defendant also read in evidence another letter from Cross, Hobson & Co. to said George Law, of which the following is a copy:—

Valparaiso, 29th March, 1850.

George Law, Esq., Dry Dock Bank, New York.

Dear Sir—The writer addressed you several times from Panama, &c., and reached this on 24th inst. The "Isthmus" steamer left this about the 14th for Panama, of which Lyons, Santa Maria & Co. (who did her business) will have informed you. Should any further of your steamers come this way, we shall be most happy to attend to them. Coals are now plenty, and should be had at $6 @ $8 a ton, in cargo. The letter for Capt. Wood we sent on to San Francisco *via* Panama, care Smith & Lewis.

The "Caroline," "Tennessee," and "Gold Hunter" steamers have also passed on to Panama, &c.

But few passengers, at the high rates of the steamers, will go on from this, where good sailing vessels are plenty, and passage 50 to 60 days, at most. Reduce the time to 33 and 35 days between Valparaiso and San Francisco, and you would secure specie, passengers, and letters.

Our San Francisco house have instructions to purchase 250 or 300 tons of coal, in virtue of your letter 12th January, to Mr. Cross.

The $4000, referred to in same letter, never came on, and are now unnecessary. We trust they are safe, and, referring to our Mr. W. L. Hobson, now in Uuited States, we are, dear sir, yours truly. CROSS, HOBSON & CO.

The defendant read in evidence another letter from A. Cross to said George Law, of which the following is a copy:—

Valparaiso, 23d April, 1850.

My dear Sir: I have no letter from you since leaving New York, although I have written you frequently on my tedious journey, and since coming here. To-morrow our monthly steamer comes in from Panama, when, I suppose, we will have our American letters.

I congratulate you on the fortunate passage out, of the "Columbus," and the friendly and respectable captain (Peck) who has charge of her.

But few passengers offer for Panama, but quite a number for California. We understand you have another on the way. His costs and expenses (about $3000) will be nearly covered by passage money. A draft on Mr. Roberts for any deficiency, as requested; write him in name of house.

I have no news from Sanders, although late dates from California. Land scarce in good parts, and I hope the collector may have made up his mind in time.

The traffic continues, I understand, *via* the Isthmus. Success. Coals here are getting plenty, and hulks, both here or in California, can readily be had. I shall again have the pleasure, end of the month, or by next American steamer which passes. Business flat, and a crowd of goods and vessels here.

Our house in California would buy coal in good time for "Isthmus." Hope you have written them. Also, that the doubloons not wanted are all safely restored to you. I report to Panama about coals afloat.

I remain, with regard, your friend and servant,

ALEXANDER CROSS.

GEORGE LAW, Esq., New York.

The defendant also read in evidence another letter from said Cross, Hobson & Co. to Henry Tracy, of which the following is a copy:—

VALPARAISO, 28th May, 1850.

HENRY TRACY, Esq., agent for U. States Mail Steamship Co., Panama.

Dear Sir: The writer received your esteemed favor of 24th ult., per "Bolivia," on 24th inst., with American dates to 13th March. Other houses have to 13th April, having been sent from Chagres by special express.

We received Mr. Law's letter, and answer him now fully, having, meantime, secured one cargo of best Bushy coal, at $20, put in Panama, or $11 here, to commence delivering on 4th proximo, free of demurrage; thirty days to lay in Panama for discharge, or $20 a day extra; 500 tons the "Cumberland." We hold on to this afloat, until we can procure sufficient for the "Republic" and "Antelope," now due. This we hope to do, from several cargoes expected, when we will pass you on a cargo or two, as we can pick them up, in conformity with Mr. Law's order. Scarcely any coals are left here from the heavy stocks last month, which have all been swept off for Coquimbo, Panama, &c. We have likewise procured the refusal of a 600 ton cargo, which is intended for San Francisco, to leave here the next month, the "Eugenia." We have one or two vessels to our address, which left Liverpool and Dundee end of Feb-

ruary and middle of March, which should be here by next mail from Panama. Their principal cargo is coals, and we will hold them back for you until orders. Mr. Law's orders are 450 tons for "Republic," 350 for "Antelope" here—500 to 1000 tons, if afloat, for Panama.

The "Isthmus" had 150 tons purchased for her at San Francisco @ $30, by our friends, as you will be aware, on account of an order for a larger quantity. Your order for potatoes, &c., will be complied with on arrival and dispatch of steamers. You would be agreeably surprised by the "Columbus," which would reach Panama about the 8th inst. Capt. Peck, we believe, laid in a good stock of vegetables of his own accord, which is as well, as your order for her came late.

As to remittances, we cannot negotiate drafts on Panama, and will have to request you to send us payment, per steamer, in doubloons or good gold dust. This latter is worth over eighteen dollars an ounce here, if not full of alloy, and is the best remittance.

In sending ounces, avoid Peruvian, which are worth one real less here, and also the following, which are uncurrent, viz: Colombia, of 1821 and 1822; Chilian, of 1826 and 1830; Buenos Ayres, not restamped. You will please take notice that the coals bought, put in Panama, are at the risk of the Company and should be insured, as we engaged to pay the price stipulated, lost or not lost.

We trust we may get coals in a day or two, so as to allow the "Cumberland" to go down at once to Panama.

We are, dear Sir, yours truly,

CROSS, HOBSON & CO.

The defendant also read in evidence a letter from said Alexander Cross to said George Law, from which the following is an extract:—

VALPARAISO, 27th May, 1850.

George Law, Esq., New York.

Dear Sir: You will have heard separately from our house at San Francisco and here, of their being attentive to your orders about coals and steamers. They will be always ready to second you promptly in all you require. Aspinwall sends his letters across the Isthmus by express, per Chili steamers, and so his agents here have dates to 13th April.

Yours are to 13th inst. only, having been in Panama a day or two after the penultimate (or March) steamer from Panama. Had they got here last month, a saving of 4 or $5000 at least could have been effected in coal purchased, as now there are quite a number of orders received from Panama, United States, &c., in addition to yours per "Northerner," &c. Coals last month were so plenty, that one party bought 2000 tons on speculation, and sent a great part to Panama, which will reduce price there. On your March order, we secured, against various competitors, the cargo of the "Cumberland," @ $20, put in at Panama, with thirty running lay

days, or $11 here, to wait ten days from 25th for our decision. We cannot find out when your "Republic" and "Antelope" really sailed. There are two cargoes, which left England end of February or middle of March, at our disposal. These we cannot count on for you; but if we can get hold of any other coal here, before arrival of steamer, we will send on the "Cumberland" (500 tons) at once, which we are looking out for. The other part of your order, for here and Panama, we will attend to without any avoidable delay. For the moment, there are no others here disposable; but there will be, from one day to another. Our care will be to provide first for steamers here, to avoid delay on arrival; then for Panama, or both together, if possible. We addressed Mr. Roberts on 11th, advising of having got the refusal of "Eugenia's" ship and cargo of coal, bound for San Francisco; former for $7000, half her cost—latter at market price; 550 @ 600 tons. The owners have been hitherto prevented dispatching her, for want of coal, but are determined to carry through their intention. Your orders relative to it, at San Francisco, will be out a few days before her arrival.

I note you had sent out quantities from the States, and had ordered 2000 tons from Cross, Wedderspoon & Co., of Glasgow. You will find that you cannot do better, as to cost and freight, than to get all your coals from this latter source.

Please say whether you wish correspondence in steam and coals to be addressed to you, or whether you would prefer that we communicate with Mr. Roberts, as you may not wish to be troubled.

The letters from Mr. Henry Tracy, at Panama, are received, and will be attended to at this time. As no drafts are negotiable here on Panama, we will request him to send us up the money.

You will be pleased at the "Columbus's" success. Capt. Peck is a very decent man. Coal ships require 25 to 30 days to reach Panama from this. From San Francisco they write me that the "Senator" clears every month $100*m.*, and the small steamers pay their cost every two trips they make. It is estimated that, within the last twelve months, above six millions of dollars have been paid for freight and passage money on the rivers in California. The trade is so active and extensive that this is no exaggeration. They further say, "a contract has been made by Howland & Aspinwall's agent with the proprietors of Benicia for land, to establish a coal dépôt for the steamers. A similar contract has been made with the Russians, who think of supplying this market with coal from the North. I doubt if much will grow out of either contract. It appears only another 'spasm of Benicia.'

So much per steamer and news from the north, of which, ere this reaches you, you will have much later, direct.

All has been done here possible with this government, and I have seen Mr. Peyton, also, and will endeavor to keep this line free of exclusive privileges in future, which is probable, as the public claim, and see the necessity for competition.

But even as it is, a rival steamer sailing once a month from this for Callao and Panama could not be prevented. It would draw Panama and Valparaiso within fifteen days of each other, instead of twenty-four down, and twenty-eight up, as the present company takes. It would be well to advertise ahead, all over the world, the day of sailing from Panama, in order to secure all correspondence, passengers, and specie from United States, Europe, and California, which are directed thitherward. It will not pay very well at first, but by steadily carrying it on, it will. We would use our efforts to get liberty to call at Copiapo (our most profitable port) for bar silver and passengers up, and believe that, by the time when you can spare steamers for this end, we have a good chance. Such a direct line to Panama would go so far ahead of present steamers in speed (which at furthest do not go eight knots), that it would sweep all going, and be very popular. It could also communicate with California boats and Atlantic boats, for their bills of lading of specie, or through passenger ticket.

I was told about a propeller to be had in the United States for $75,000, warranted to go eleven knots, with accommodations for 100 passengers. This would answer admirably. I see a steamer of 200 tons, the "Tintern," advertised to leave London, end of March. She will not be allowed to coast, being British, and is too small for the long trip. Perhaps she will cruise about the Bay of Panama.

The "Ecuador," iron paddle steamer (English), 500 tons, is in fair order. She might be bought from this company (in London), for £15,000 to £20,000; but, if anything, she is too small. This I merely mention as having come to my ears. She might perhaps take the place of one of the long-course boats, should she answer for the inland navigation, and merits consideration, being on the spot. Her accommodations are pretty tolerable, but of course not very extensive.

I am, with esteem, my dear sir, yours faithfully.

ALEX. CROSS.

The defendant, to maintain the issues on his part, called as a witness, Oliver Charlick, who testified as follows: I was at Panama, in spring of 1850, attending to arrival and dispatch of steamers there; names steamers, "Antelope," "Republic," "Isthmus," and "Columbus;" called Law's Line in compliment to Mr. Law; I was agent for Law's steamers on the other side, also mail line on this side; I was the general agent when at Panama; knew of the sending forward of the coal by Cross; I bought coal to arrive and afloat in the harbor; left Panama, May, 1850, for San Francisco; came down coast again in June, and returned the latter part of July; continued to act in same capacity at San Francisco; had general charge of all these vessels in the Pacific, and all other vessels having business with these four ships; recollect arrival of "Lady Lilford" in San Francisco, in November, 1850; I received her cargo from

Cross, Hobson & Co., and settled for her cargo of coal. [Produces bill.] The signature of Cross, Hobson & Co. to this was made by Alexander Cross.

The defendant's counsel thereupon read said receipt, which was in the words and figures following, to wit:—

December 31, 1850.

Oliver Charlick, Esq., Agent Law's Line Steamers,
To Cross & Co., Dr.,

To 492½ tons coal, delivered from ship Lady Lilford, as follows:—

	TONS.	CWT.		
To steamer "Republic"	335	15		
" " "Isthmus"	4	7		
" " "Columbus"	152	12		
	492	14	@$30,	14,775 00
5 days' demurrage				125 00
Charges in Valparaiso. { 5 per cent. commission on purchase				738 75
Charges in Valparaiso. { Boat hire, petties and postage				13 75
				15,652 50
Cash advanced for duties on the above coal				300 20
				$15,952 70

Received payment.
CROSS & CO.

December 31st, 1850.

Recollect arrival of "Charles V.," with coal on board. I purchased her cargo from Alexander Cross, by agreement with Cross, for myself, terms $16 per ton, payable in cash; I paid it; the receipt was exhibited to him, and he said the signature of Cross & Co., to this, is in the handwriting of Alexander Cross; the receipt was thereupon read, in the words and figures following, to wit:—

San Francisco, December 23d, 1850.

Mr. Oliver Charlick,
To Cross & Co., Dr.,
For 350 tons coal per ship "Charles V.," from Valparaiso, @ $16. $5,600.

Received the amount.
CROSS & CO.

Witness continued. The sale was made a day or two before; the money was paid when the vessel finished discharging, about fifteen days afterwards; before the sale to me, I refused to take this cargo, on Mr. Law's order: this was 8 or 10 days before the sale to me; Mr. Cross called on me, and stated that a cargo of coal, by the "Charles V.," he had purchased at Valparaiso, on Mr. Law's order;

then a controversy took place, which ended in my making this purchase; Mr. Cross arrived by the "Antelope," in October; he opened correspondence with me in relation to this business with Mr. Law; he wrote me a letter a day or two after he arrived; the letter of the 28th October, 1850, (before read by plaintiff) is the letter; I answered it in October, 1850.

Said letter was produced and read by defendant, as follows:—

San Francisco, October 29th, 1850.

MESSRS. CROSS, HOBSON & CO.:

Gentlemen: I am in receipt of your favor of 28th inst. In comparing your extract with my advices, I find they do not agree. I doubt not that, upon comparing the originals, all would be explained. In answer to your last question, I beg to say, that it will at all times afford me great pleasure to conform to the directions given by Mr. Law in relation to coal for the steamers; but it is a duty I owe to myself, as well as to him, to look with care to all matters in which he is interested, that come properly under my supervision. I trust that my advices, now daily expected, will make all quite plain, and that all your transactions will be highly satisfactory to him. I would call personally on you, but am, as you know, very much engaged. I do not anticipate any misunderstanding, and I reply to your note thus early, that no cause may exist to disturb the heretofore friendly relations between your house and Mr. Law, by any want of information on my part.

I beg to assure you of my earnest desire to conform to your wishes, and am, with great respect,

Yours truly,

OLIVER CHARLICK.

Witness continued. He told me he was expecting coal to arrive for Mr. Law; I declined receiving it; he then wrote me letter of 28th of October; a correct copy of Mr. Law's orders to purchase was furnished me by Cross within two weeks or ten days after; it was before I took "Lady Lilford's" cargo.

Q. What is the meaning, among merchants, of the terms "afloat" and "to arrive?"

A. Among merchants, &c., I understand the term "afloat" to mean afloat in the harbor, and a cargo "to arrive" means to arrive in a vessel not in port at the time. As the agent of Mr. Law, I declined to receive the cargo of the "Charles V.," on the ground that he had not purchased according to order—afloat and at Valparaiso; this ground was communicated to Mr. Cross in the early part of November, and continued to last of February; saw him almost every day; called his attention to difference; in reply to my saying he had not purchased according to order, he said he understood all about that, and that Mr. Law would settle all that, and that there would be no trouble about a cargo of coal, one way

or another; I determined to buy this cargo about the middle of December, a few days before the date of the bill, the time the ship commenced discharging; did not learn from him that he had drawn on Mr. Law for the cost of the coal; I first learned that along about the early part of January; had no knowledge of it when I bought the coal of the "Charles V.;" I learned from him that he had drawn, in November, from San Francisco; it took about 75 days to communicate at that time to New York and back—sometimes 80 days; there was no arrangement that I should take the cargo of "Charles V.," and pay freight for it; he wanted I should take "Charles V." on same terms as "Lady Lilford;" I declined; I insisted, in relation to the "Lady Lilford's" cargo, that he should have drawn at Valparaiso for the price; I did not know but that he had drawn from Valparaiso for invoices, and declined until I could hear; the "Lady Lilford" had an assorted cargo for Cross' benefit; he wanted to know why I objected; I said it did not accord with my advices; he then wrote that letter of the 28th of October, 1850; I delayed accepting "Lady Lilford's" cargo; another objection I made was, that the vessel chartered had been used for other purposes; "Lady Lilford" was used to send up grain, on which charter party of coal had to pay freight; "Charles V." had also quite an assorted cargo besides the coal; there would have been no difficulty in "Charles V." bringing on all the "Duncan's" coal, if they had left out this assorted cargo; the bill of 23d December was dated back, no doubt, because quantity could only be ascertained by delivery; this coal fell short about fifty tons; no arrangement was made by which I was to pay freight, and leave the balance to be settled by Mr. Law; no such arrangement made as described in letter of 15th January, from Cross to Law; no other arrangement than a sale to me; none, except what was contained in the bill of sale; none of the coal of "Charles V." was used upon Law's steamers, nor paid for by him.

The witness was here shown memorandum on back of bill, in reference to which he said:—

The memorandum dated 14th January was put on afterwards by Cross, after I had paid him for the coal; I think it was put on in my office; I don't think I was present when it was put on; he asked me if I had any objection to his putting it on, or an endorsement on the bill to send on to Mr. Law, that Mr. Law might see what confidence he had in his liberality; I told him no; I afterwards found it there.

Hereupon plaintiff's counsel read the said memorandum, as follows:—

It is understood that the 350 tons coal mentioned in this bill, is claimed to have been purchased by Cross, Hobson, & Co., Valparaiso, under order from George Law, Esq., 28th May. The construction of the order not being agreed to by Mr. Charlick, the settlement of the same for our claim has been referred to Mr. George Law for his

decision, in accordance with our letters to Mr. Charlick, of 23d December. CROSS & Co.

San Francisco, 14th January, 1851.

Endorsement on back is by my clerk in San Francisco.

Plaintiff's counsel also read this, as follows: "1851. Cross & Co. Price coals ex 'Charles V.' $5,600, charged February 8, account line;" can't say when my clerk made this endorsement; suppose it was made at the time, and in the course of business. The defendant's counsel objeced to reading marks of the clerk. It was allowed, however, and read, subject to objection. I can't remember receiving charter party of "Charles V.," but found a copy among my California papers; "Amalia's" I do not find at all; recollect arrival of "Amalia" afterwards; efforts were made to induce me to take her coals on Mr. Law's account; I declined to receive it on his account, on the ground that the coal she had on board was bought by arrangement between Captain Ackley and him, which was without authority, and they were unable so show me that Mr. Law would consent to accept or pay for it; Mr. Cross represented that about 100 tons were of the "Duncan's" cargo; I objected to take that; I told him if he would satisfy me that he had bought that, and who he bought it from, I would overlook any mistake that had been made; he was never willing to make out who he bought it from or who were the real owners; the controversy arose on arrival of "Lady Lilford's" cargo; I objected to it; when she arrived, Cross wanted me to lend him ten thousand dollars on it; I declined until I saw his orders; I spoke to him of the difference between a purchase of coal "afloat" or coal "to arrive;" he had no papers to show me, and I then notified him that I would not take any of the "Duncan's" coal; this was in latter part of October; controversy continued till 26th or 27th February; sixty or eighty tons on top of the "Amalia's" coal was fair coal—English coal—the rest was a pretty hard lot; it was entirely worthless for steaming purposes; unfit to send a steamer to sea with; the coal was bituminous coal—had been exposed to rain and weather, so that when you undertook to handle it on the wharf it crumbled to dust, so that you could not get coal enough out of it to pay for screening; it was light, nearly white; not a pound of "Charles V." nor "Amalia's" coal was received by me for Mr. Law; don't think any of his steamers ever received a pound of it in any shape; I made a verbal arrangement with Mr. Cross, along in February, about purchase of "Amalia's" cargo—the substance of it was reduced to writing, and we differed about the terms, and it was not signed; I was to take it and pay him $17 a ton for it; this was about the middle of February; our understanding was that my reception of the coal was not to involve Mr. Law, but on the contrary, it was to be a settlement of all legal controversy; coal was low then; Mr. Cross claimed that he had bought the coal for Mr. Law, and that Mr. Law understood it as he did; I claimed that

Cross had no authority, and I hadn't to charge him; we had several references on the matter to different people, in a friendly way; the result was, an arrangement such as I have described; about 70 or 80 tons of the coal were delivered under this arrangement; she was hauled down to my wharf; I proceeded to unload until I got down to the Coquimbo coal, and found it so bad and worthless that I protested against taking it; while this controversy was going on, steamer came in, and I received advices from New York of about 11th January; Cross said drafts were not paid; after arrangement in February and taking coal, the first I heard from Cross was by letter of February 28th; I never ordered duty paid, as stated in letter of 28th February from Cross to me; I never requested them to advance the duties on behalf of Mr. Law; I declined to receive it long before this; Mr. Law was out of the question; Cross never claimed for some time anything from Mr. Law, except to talk it over with Mr. Law and get what he could; I was not to interfere in his making what he could out of Mr. Law; I had made all the objections I have stated; they had been made all along to Cross up to 28th February; it was understood I was not to receive the coal for Mr. Law; I agreed to buy the coal at a high price; I took the risk; it was with the distinct objection by me that what I had done was not to involve Mr. Law; this was the understanding as to the "Amalia;" a day or two after I commenced receiving coal, I notified him that the coal was worthless; that I did not feel like standing loss, and he must do something about it; on the 24th he wanted me to go on and receive it, it would be all right; a day or two after this I received the letter of the 28th February; it astonished me entirely; his letter of 28th broke it all up; this arrangement as to the "Amalia" was substantially that which was made as to the "Charles V."; what was put on the back of the bill, it was that he wanted to show people in New York what confidence he had in their liberality; the cargo of the "Amalia" was sold at auction; a man named J. B. Bessey bought the "Amalia's" cargo; I had no interest in the purchase, at the time of the purchase; I had subsequently; I finally paid for it, and lost about three-fourths of the money; Bessey came and told me of sale, and asked if he bought would I let him lay alongside wharf, or let vessel lay till he sold; I assented; after he bought, they would not deliver till he gave security; he went to Wells & Co.; I told them if they went security for coal, that I would see it was not delivered till they were paid or secured; Bessey went on taking out coal and selling some two or three loads; he got into difficulty; he agreed to lose $700 on it, and give note for balance; he put part on dock and part on an old brig alongside; I sold some of it at all prices, some few tons at $16 or $17; don't think I got anything for balance; put it in brig; sold brig, and got about $1000 for coal.

Being cross-examined by plaintiff's counsel, witness said: Have never been at Valparaiso or Coquimbo; can't say Coquimbo is free

from rain; I received letter of February 24th, from Alexander Cross, at San Francisco.

The plaintiff hereupon proposed to read the letter of the 24th of February, from Alexander Cross to Oliver Charlick, to which the defendant objected. The court overruled the objection, and the defendant's counsel excepted to such decision; thereupon the letter was read by plaintiff, as follows:—

San Francisco, February 24th, 1851.

Dear Sir: I regret you do not like the look of the coal per "Amalia," as per your note. The 140 tons ex "Duncan" are fresh, and were transhipped from vessel and equal to what you approved of per "Charles V." The rest was bought nearly eight months ago, in Coquimbo, for account of your line, as the best English coal there, or in Valparaiso. There was but little stock, consequently little choice. Both are paid for by our Valparaiso friends, long ago, and since were at disposal of the line. I think, if you take all this into consideration, you will not hesitate to take it from its appearance, for it will, no doubt, burn well. It is a pity that the vessel is now at the end of her lay days, rendering the matter very embarrassing, from your previous delay in regard to it, and I pray that you will do me the favor to order your men to go on receiving it.

I am, yours truly,
ALEXANDER CROSS.

O. CHARLICK, Esq., present.

(Upon showing a note to the witness, he further said) this is a note referring to this coal.

The plaintiff thereupon read said note, which was as follows:—

Mr. CROSS.

Dear Sir: The article on board the "Amalia" will not answer for coal, and I must decline to receive it. I have examined it, and find it entirely worthless.

Very truly yours,
O. CHARLICK.

Witness continued. I can't say when note was written; it referred to cargo of coal; I began to take the coal out before writing was made; but not before verbal arrangement; the verbal arrangement was made some days before coal was discharged; I can't state how long before, but from five to ten days before, I think; Mr. Cross and I each drew a memorandum; "Schedule A" was the result; Cross refused to sign it; when "Amalia" arrived, Cross applied to me to take the coal; I declined; he then wanted me to take it on some arrangement as to "Charles V.;" negotiations continued till about the 22d, when it was reduced to writing; I think verbal agreement was before the reducing of it to writing; recollect changing the order of the writing, at Mr. Cross' request; this last one was the result under which I took that coal; my recollection is, that

Cross refused to sign that paper; I wrote him a letter on 4th February, 1851.

Witness was here shown a letter, which he identified as the one sent by him to Cross, of that date, and of which the following is a copy:—

Mr. Cross.

Dear Sir: Sam'l Wilson will perhaps take the cargo of "Amalia," at say $17 or $18; if so, 'tis better to let him take it. You can enter by paying only the duty at valuation in England. Mr. Collier has inquired at the custom-house. I am called out of town quite unexpectedly for a day or two, or I should see you.

Yours, truly,
O. CHARLICK.

San Francisco, Feb. 4, 1851.

Gen. Wilson was then engaged in the Gold Bluff Mining; he was president of a steamboat company on the river; his letter don't refresh my recollection that "Amalia" arrived on the 8th of January; it is that she arrived early in February; I think I replied to letter of 28th of February; I have the letter; this is it—dated March 1, 1851.

This letter of March 1, 1851, was shown and proved, and was read, as follows:—

Mr. A. Cross:

My dear sir: Your favor of this date received, and contents noticed. As the subject upon which it treats has been very fully discussed heretofore by you and myself, it is not necessary for me to repeat it in this.

I beg to assure you of my desire to carry out all the wishes of my friends, when consistent.

Very truly yours, &c.,
OLIVER CHARLICK.

San Francisco, March 1, 1851.

My bookkeeper's name is John Crane; the endorsement on charter party of "Charles V." is in his handwriting; he is in San Francisco; he has not been away from there since the date of the endorsement; the clerks usually endorsed papers when they filed them away; have no recollection of receiving charter party of "Charles V." in letter of October 28th; can't say I ever received that from Mr. Cross; John Crane endorsed on letter; it was not the usage of the office in some transactions to omit entering charge of so large a sum as in receipt of 23d December, for several weeks, and in some transactions it was; the line account was a general account, we called it a dead account; it represented myself; I was responsible for it to any one that dealt with it; I was creditor—every one was debtor that received anything from this account;

that represented receipts and disbursements connected with steamers, and all my other business; endorsement of Cross, 14th January, was made 3 or 4 days after the payment of bill; there was a subsisting arrangement, under which I made the purchase, substantially as endorsed; I don't think it is exactly according to the understanding on which I made the purchase; Crane told me one day that Cross had been in, and wanted to make an endorsement on one of the bills, and asked if he might; I said he might put anything on that did not involve me; the coal on "Charles V." I sold to the agent of Aspinwall; I think I got $19 or $20 per ton for it; it resulted in a loss; I bore that loss; it was not in the line account; no one bore it after me; in settlement with Mr. Law and others, I submitted to loss; don't think I ever claimed it; had nobody to claim it from; had I made a profit, think I should have spent it judiciously, and used it as my own; can't state the dates of payment of "Charles V." cargo; my belief is it was the 14th of January, and Cross dated back his bill; bill is evidently dated back; before going out to California, I had bought cargoes afloat, oats, corn, &c.; generally from the eastern shore of Virginia; knowledge is from my own transactions and intercourse with merchants; don't know as I ever heard it disputed as to what phrase meant; knew it as I knew words "yes" or "no;" never heard a question raised as to difference between cargo "afloat" and "to arrive;" have heard difference spoken of in corn and grain trade, generally.

Direct examination resumed. The coal from New York commenced arriving the latter part of October, 1850, and continued coming till in April, 1851; the two thousand tons from around Cape Horn arrived; the coals for these steamers came in twelve or thirteen cargoes arriving from the latter part of October, 1850, till April, 1851; the English coal arrived shortly before the "Charles V.;" letter of mine of 4th February, written to Gen'l Wilson, because Cross wanted me to sell him the coal, or dispose of it in some way, at $17 or $18; he was willing to sell the coal, if he could get enough to pay his expenses; afterwards, in reference to Wilson, Cross said I ought to persuade Wilson to buy it; I tried and Cross tried, but did not succeed in getting him to buy it.

(The defendant rested.)

The plaintiff, to prove and maintain the issues on his part, called as a witness

THEODORE W. RILEY, who testified as follows: That he had resided on the Pacific Coast of America from 1826 to 1857, at Valparaiso, Coquimbo, St. Jago, and other places; and was copartner of the house of Alroh & Co., connected with the import trade; that he had resided at Coquimbo more than a year at a time; at Coquimbo it rains very seldom, but once or twice in a twelvemonth, and seldom exceeding an hour; at Valparaiso it rains frequently; that he is a merchant at New York, and conversant with business

here; "afloat" means merchandise laden on board of vessel; it is general, and has no limitation to vessels in port; vessels "to arrive" are cargoes expected; in vessels to arrive, it is usual to specify time in which cargoes are to arrive, I passd a year in Coquimbo, in part of '30 and '34, and was there in 1851; but a day there.

Being cross-examined, he stated: Only recollect one rain in the winter, in June or July; previous to the rain, the country is very dry; agriculture there is conducted by irrigation: there are heavy dews six or seven times a month; the growth after moisture is very rapid; I hold plaintiff's power of attorney; employed counsel; have suggested names of witnesses—not of all; not interested in claim.

Q. When a letter was written to a port to purchase "afloat" and consign it to another, what does it mean?

A. If it designates one port, it speaks for itself; letters written to port of Valparaiso, to purchase "afloat" to send to San Francisco, applies to cargoes afloat in neighboring ports; no other application in its general meaning; agriculture at Coquimbo is conducted by irrigation; the streams come from the Andes.

Hereupon the testimony closed, and the defendant's counsel asked the judge to instruct the jury the several propositions following:—

1st. That the evidence introduced by plaintiff shows that the employment in question of A. Cross, by letters of January 12th, 1850, March 12th, 1850, and May 28th, 1850, was in the business of the firm of Cross, Hobson & Co.

2d. That the directions to A. Cross in the business of his firm of Cross, Hobson & Co., was an employment of that firm.

3d. That the execution of the orders of the plaintiff, so far as shown to have been followed, or as claimed to have been assented to, was by the firm of Cross, Hobson & Co.

4th. That plaintiff cannot recover for any services rendered or moneys expended by Cross, Hobson & Co.

5th. That the power of the agent is limited to the authority given him by his principal.

6th. That the agent is bound to follow the instructions of his principal in every point.

7th. No motive connected with the interest of the defendant, however honestly entertained or wisely adopted, can justify a breach of his instructions.

8th. That the defendant's letter of the 28th of May, 1850, did not authorize Cross, or Cross, Hobson & Co., to purchase for defendant the cargo of the "Duncan."

9th. That there is no proof that plaintiff or his house paid or agreed to pay any particular sum for the invoice cost of the "Duncan's" cargo.

10th. That the defendant, by repeated and uniform written orders, directed that coals should be provided and kept ready for the "Ante-

lope" at Valparaiso, and gave no authority to plaintiff to purchase and place coals for the "Antelope" at any other place.

11th. That Captain Ackley is not shown to have had any authority to give the directions on behalf of defendant, contained in his letter of the 30th of August, to forward the coal at Coquimbo to San Francisco.

12th. That his position and employment, as captain of the "Antelope," gave him no authority to give any such directions.

13th. That no authority is shown warranting the purchase of the coal at Coquimbo.

14th. That plaintiff had no authority to purchase, for defendant, coal of the character and quality of the Coquimbo coal.

15th. That no authority is shown warranting the forwarding of the coal at Coquimbo to San Francisco.

16th. That the directions given by defendant to Charlick might legally be proved by plaintiff, but are not admissible evidence for defendant, unless communicated to plaintiff.

17th. That if the jury believe the purchase of coal at Coquimbo was communicated to defendant by Cross, Hobson & Co.'s letter of the 15th July, and the "Antelope" sailed from New York on the 18th of May, and arrived at Valparaiso on the 29th August, and sailed thence the 7th of September, and the ordinary course of mail from Valparaiso to New York was from 45 to 60 days, it would not be reasonable to require any reply to the letter of the 15th of July to be directed to Valparaiso.

18th. That the rejection and refusal of the "Duncan's" cargo at San Francisco, as testified to by Charlick, was, in law, the act of defendant, and was a notice, within reasonable time, that defendant would not ratify the purchase of said cargo, by Cross, Hobson & Co., or plaintiff.

19th. That the refusal or neglect of Captain Ackley to take the Coquimbo coals on board the "Antelope," and the purchase of and payment for coals at Valparaiso to supply the "Antelope," together with the communication to Cross, Hobson & Co., or plaintiff, of defendant's written instructions to Ackley, were reasonable notice of defendant's refusal to take the Coquimbo coal.

20th. That the sale to Oliver Charlick, individually, of the cargo of the "Charles V." and the payment therefor was a waiver and abandonment of all legal claim against defendant, by reason of the purchase of said cargo.

21st. That the rejection of the "Amalia's" cargo, by the agent of defendant at San Francisco, was reasonable notice of defendant's refusal to ratify the orders or advice given by Captain Ackley in his letter to Cross, Hobson & Co., of the 30th August, 1850.

22d. That no portion of the cargo of the "Duncan" or of the Coquimbo coal ever came to the possession or was applied to the use of the defendant.

23d. That plaintiff has not proved the payment of any money, by his firm or himself, for the freights of the coal on the "Charles V."

24th. That plaintiff has not proved the payment of any money, by his house or himself, for the freight of the coal on the "Amalia."

25th. That plaintiff has not proved the payment of any money, by his house or himself, for the duties of coal on the "Amalia."

26th. That plaintiff has not proved the payment of any money, by his house or himself, for demurrage on "Amalia's" cargo.

27th. That there is no count, in plaintiff's declaration, on which he can recover for engagements entered into on defendant's behalf.

28th. That there is no proof in the case that plaintiff, individually, has paid, or expended, or agreed to pay, or expend any money for the defendant or for defendant's use.

The judge hereupon charged the jury, as follows: The first question made between these parties is, as to the right of the plaintiff to sustain this action in his own name. This is chiefly a question of law, especially so when there is no controversy as respects the facts. Now, the proof is all one way, that the contract or agency originally was made between these parties, Cross on one side and Mr. Law on the other; and this is the contract which must govern the transactions that have occurred in the execution or fulfilment of the agency, unless it has been changed by the agreement, or, at least, by the acquiescence of both of the parties. One party alone had not the power to change the contract. Now, there is, undoubtedly, a good deal of evidence in the case, tending to the conclusion that Cross desired to turn over the execution of the contract and make it part of the business of his firm. It appears, from the correspondence read, that, on his side, it was carried on in the firm's name. But this alone is not enough to justify the conclusion that there was such a change in the contract, because Mr. Cross had no power to make that change; it required the assent of Mr. Law. According to my recollection, every part of the correspondence by Mr. Law was addressed, not to Cross, Hobson & Co., the signature of the letter replied to, but to Alexander Cross, as the person with whom he originally made the contract, indicating that there was no acquiescence in, or recognition of any change in the contract made, by Mr. Law; and, if the facts are so, my own opinion is, that the suit has been properly brought in the name of the plaintiff.

This, gentlemen, brings us to the controverted matter, to which I will very briefly call your attention, being content to leave those matters for your examination and settlement, after stating some of the principles of law which are applicable to the case. Now, the first item in the controversy is in respect to the cargo of coal of the "Duncan." The freight has been paid on this cargo, and that, of course, is out of the question.

The cost of the coal has not been paid by the defendant, and is claimed by the plaintiff. As to the five per cent. commission for purchase, these are incidental, and if you come to the conclusion on

the whole case that the defendant is liable to reimburse the agent for the cost of this coal, then other matters follow.

The first point made here, on the part of the defendant, is, that the cargo of the "Duncan" was purchased without the authority of the principal. That the agent departed from his instructions, which were particular, and that his principal, Mr. Law, is not liable. In order to bring this point of the case to a test, you must look to the instructions that were given, and then to the manner in which they were executed. They will be found in the letter of the defendant, dated May 28, 1850, and are in the following words:—

"I want you to purchase me two cargoes of coal, afloat, and send it to San Francisco as soon as possible. Consign it to your house there for me. You can draw on me for the price of the coal at Valparaiso," &c.

Now, the plaintiff was instructed to purchase two cargoes of coal, afloat, and ship it to San Francisco. Well, the cargo of the "Lady Lilford" was purchased and sent on. There is no controversy about that.

The coal of the "Duncan," it seems, was on its way to Valparaiso, from across the Atlantic, and was expected to arrive at a particular time at that port. This cargo of coal, thus on its way, was purchased by the plaintiff at $12 a ton, with the limitation or qualification, that, should it not arrive within sixty days from the time of the purchase, it would be optional with the purchaser whether to take it or not. Well, this coal arrived in the "Duncan," 440 tons. The master of the vessel, desirous of returning without delay, refused any engagement to ship the coal from Valparaiso to San Francisco; and, therefore, it was necessary to charter another vessel for this purpose, and the "Charles V." was chartered, and the coal transshipped from the "Duncan" to this vessel, and sent on to San Francisco.

The "Duncan" arrived in Valparaiso, I think, the 13th August, and the coal was soon after shipped to San Francisco. Now, it is said by the learned counsel for the defendant, that the circumstances under which this cargo was purchased were not in obedience to the instructions of the principal, which were, to purchase two cargoes afloat at San Francisco. Well, you have had some testimony here, by gentlemen engaged in commerce, as to the meaning of this term afloat. I am not going to give you any instructions, as matter of law, about the mere definition of this term. The meaning of it, in common parlance, as well as according to the testimony of the experts, is a cargo afloat in a vessel, as contradistinguished from coal in a coal-yard on land. I suppose that is the good sense of it, and I suppose that is all that there is as to the meaning or understanding of this phraseology. Now, when we come to the question whether (as I understand the learned counsel to contend) it means your agent must purchase a cargo afloat, after it arrives and when anchored in the bay of Valparaiso, or whether it may be purchased

before it arrives, and under the condition that it arrives at a particular time, whether there is any substantial difference in the two modes of purchase, or whether each of them does not fall within the terms of the instructions.

I am inclined to differ from the position taken by the defendant. I do not see any substantial difference. The cargo was to have arrived within a given time, in order that the contract of purchase should be completed. When it did arrive and was there afloat in the harbor, whether it had been conditionally purchased on its way and the contract perfected on its arrival, or whether it was purchased after its arrival, seems to me involves no substantial difference.

Now, the coal of the "Amalia," 90 tons of which were taken from the "Duncan," on board of the "Amalia" at Valparaiso. She then touched at Coquimbo, and took on board at that port the residue of her cargo, 328 tons, I think, making in all 418 tons. This was purchased at $11.50 per ton. That item has nothing to do with the instructions or orders given by Mr. Law, under the date of May 28th, to which I have just called your attention.

Those were orders to purchase two cargoes to be forwarded to San Francisco. One that was purchased was the "Lady Lilford," and the other the "Duncan." These completed the two cargoes, and filled the order.

This coal at Coquimbo was purchased under instructions of Mr. Law to the plaintiff, to buy 350 tons of coal at Valparaiso, to supply the steamer "Antelope," that was sent round the Horn, and which was to constitute one of the steamers on the line to be established from San Francisco to Panama.

That is the authority to be relied on as respects this item of coal in controversy.

These instructions were first given in a letter from Mr. Law to Mr. Cross, of the 12th March. Mr. Law, in that letter, stated that he might expect the "Antelope" to arrive in Valparaiso about the 1st of June. There are two letters, both dated the 13th of April, in which Mr. Law reiterates these orders or instructions to the plaintiff, and, on the 26th of April, he again refers to it, and states in that letter that the "Antelope" would arrive about the 18th of July. He delayed her departure, I suppose. And again, in a letter of the 28th of May (the same letter that contained the order for the two cargoes), Mr. Law advises the plaintiff, referring again to the "Antelope" and the 350 tons, that she will not arrive until about the 18th of July. In point of fact, she did not arrive until the 28th of August, in consequence of a delay upon her trip; she got out of coal. There was, therefore, a space of time running from the 1st of June (which was the time, according to the first advice to the agent, that the "Antelope" would arrive, and that the coal would be necessary at that port for her), to the 28th of August, almost three months, that the order of Mr. Law to the agent at Valparaiso was pending to purchase this coal; well, on the 15th of July, Mr. Cross wrote to

the defendant that he had purchased the coal for the "Antelope," not at Valparaiso but at Coquimbo, stating as a reason, that coal was scarce and difficult to procure, and he was fearful this vessel might arrive, because he was expecting her weekly under previous advices; and, in order to avoid any delay, he had made inquiry about the coal at Coquimbo, and had made this purchase of 300 tons. Mr. Cross also again advised the defendant, on the 29th of July, that he had provided coal for the "Antelope" at that port, stating that she had not yet arrived. Well, she arrived on the 28th of August, and somewhat crippled, so as to require repairs at that port; and the captain being necessarily delayed at Valparaiso for these repairs some few days, required that the coal should be provided for his vessel at that port, so that it might be taken on board during the time he was necessarily delayed for the repairs, so as to avoid any further delay by going into the port of Coquimbo.

The coal was purchased accordingly by Mr. Cross and the ship supplied there with the article, leaving this coal that had been provided originally at Coquimbo there unused, and with the understanding which had been stated between Mr. Cross and Captain Ackley, that this coal should be sent on from Coquimbo to San Francisco.

Now it is said by the learned counsel for the defendant, that this quantity of coal was purchased at Coquimbo, and forwarded thence to San Francisco without any instructions whatever from the principal to the agent, and that therefore the principal was not chargeable with any of the expenses attending this cargo. The claim on the part of the plaintiff for this cargo is not only for the freight, but also for the cost, deducting the proceeds of the sales at auction in San Francisco. Well, it is undoubtedly true that the original instructions of Mr. Law, upon which this cargo of coal was purchased by the agent, were the instructions forwarded in March, and repeated in July, to purchase 350 tons of coal at Valparaiso for the steamer "Antelope," when she came round the Horn to take her place in the line, and that no authority was given by him to purchase any coal besides the two cargoes to which I called your attention, for shipment to San Francisco.

I agree, also, that Mr. Law is not bound by the advice or direction of his master to the plaintiff, that that was outside of his authority.

There might have been many considerations that would have been very proper for you to weigh, in considering this item, if the case had stood alone upon the purchase of the coal at Coquimbo; and I am inclined to think I should have left it to you, under the circumstances of the case, as a question of fact and law together, whether or not, upon the whole of the correspondence of Mr. Law with his agent, showing great anxiety, and even necessity, that coal should be procured for the "Antelope" at Valparaiso when she came round, if under all the circumstances it could not be procured at that port, and with a view to meet the expectations, the purposes and objects

of Mr. Law, viz: the supply of coal, the agent had sought it in a neighboring port, where there was easy access, and which would, although not technically, substantially comply with the object of the agency in this particular; I should have probably left it to you to have passed upon this question of necessity, growing out of the peculiar circumstances of the case. But the shipment of it to San Francisco is undoubtedly beyond any authority that was given on the part of Mr. Law, and that brings us to another question that is common to both these cases, and to which it is material you should turn your attention, depending upon facts, governed and controlled by principles of law, which I will state to you.

Now, in the case of the "Duncan," assuming (which I do not admit) that it was purchased outside of the instructions of the defendant—and assuming that the Coquimbo coal, purchased and shipped at that port, was outside of the instructions, which I am inclined to think it was—the next question is, whether or not the principal is not concluded from denying the authority, or whether he is not bound by acquiescence or assent to the purchase, by neglecting to communicate to the agent, within a reasonable time, his dissent?

Now, as it respects the "Duncan's" cargo, on the 29th of July, Mr. Cross says:—

"Your order for two cargoes of coal we have filled as follows." Then after speaking of the "Lady Lilford," he says: "440 tons, per the 'Duncan,' to arrive, now 85 days out, at $12. If she be not here in sixty days, we will have the option to cancel the purchase."

Now, that letter was written on the 29th of July to Mr. Law, in which he was advised that the "Duncan" was purchased as one of the two cargoes, according to his instructions, and in which letter the agent states the circumstances under which the cargo was purchased. Assuming that that letter reached the principal, after a course of delay, and he saw what his agent had done under his instructions, in the way of fulfilling them, and said that he had, on his own judgment, departed from those instructions, and that he did not mean to ratify them, did not mean to be bound by them—then I instruct you as matter of law, that the principal, under those circumstances, is bound, within reasonable time, to advise his agent that he had departed from his instructions, and that he must not consider him bound by his acts, and that an omission to take those steps will conclude the principal from disputing his agent's authority in the particular instance. Now, whether there was a reasonable time, taking into consideration the distance at which the principal and agent lived apart, and length of time occupied in communication, that is a question of fact for the consideration of the jury, and one which you must determine for yourselves.

Now, in relation to the "Amalia's" cargo, I have expressed the opinion that, taking the purchase, the shipment was outside the in-

structions. On the 15th of July, the agent wrote to the principal of the purchase of this coal at Coquimbo for the "Antelope." He reiterated it also on the 29th of July. On the 7th of September he wrote to Mr. Law, announcing the arrival of the "Antelope," also the necessity of the repairs, the purchase of the cargo there to supply her wants of fuel, agreeably to the request of the master and the arrangement between him and the master to ship the Coquimbo coal to San Francisco.

As early as the 13th of July, the fact that the coal was purchased there for the "Antelope" was communicated, and all the facts leading to the conclusion, on the part of the agent, to ship this coal to San Francisco, were stated on 7th of September. Now, the question for you, particularly in this item, will be whether or not the facts in the case bring it within the rule that I have stated. This is a well-established rule, and indeed is essential to secure just dealing between principal and agent, and is perhaps more beneficial to the principal, and as essential to protect him against imposition as it is to the agent.

Take this as an illustration to exemplify the operation of the principal: assume that the purchase of this coal at Coquimbo was outside of the instructions given to the agent, yet it had been purchased by him as agent of the principal, and for the purposes for which he had been directed to make the purchase, and suppose it had risen while at Coquimbo to $30 or $40 a ton, until the principal repudiated the purchase, the profits belonged to him, and the agent would be liable, if he appropriated the profits, for every dollar, if the principal saw fit to ratify the act. Such a rule is essential to prevent frauds such as these from being committed by the agent. If he makes any profits in the execution of his agency, they belong to his principal altogether; and although he may make them in some measure out of the scope of the precise authority conferred upon him, yet the benefit is the principal's, subject, when notice comes to him of the way in which the power has been executed, to his repudiation or assent. On the other hand, when the agent has departed from the letter of his instructions, and has communicated it to the principal, in order to protect the agent from being misled in the transaction, the principal is bound, within a reasonable time, after he has notice from the agent, if he does not acquiesce, to communicate his dissent from it, so as to advise the agent that the transaction is one that he must assume the responsibility of, and then he will know how to deal with it; otherwise, the agent labors under embarrassment in not knowing whether his act will be assented to by the principal or repudiated.

Now, if you find in favor of the plaintiff, in the case of the Coquimbo coal, for which they claim not only the cost, but the freight, which was, I think $17 per ton, the commission follows; and the demurrage of $40 a day, if there was a delay (which is a question of fact), seems to be according to the agreement in the charter party.

There is another ground of defence in this case to which I will call your attention. It is said by the learned counsel for the defence that both these cargoes of coal have been arranged, and any claim which originally existed, abandoned, as to the defendant. In respect to the cargo of the "Duncan," Mr. Charlick, as is claimed by the defendant, purchased it of Mr. Cross for $16 a ton, and this was to clear Mr. Law of any charge or liability.

The plaintiff insists that this was a payment of the freight only, leaving it open for the agent to go against Mr. Law, the principal, for the residue, the cost of the coal and commission.

This is a question depending upon the evidence, and all I intend is, to call your attention to the point. It will be for you to determine whether there was a sale by the plaintiff to Charlick, which concludes the whole transaction, or otherwise. The same question is also presented as to the cargo of the "Amalia." In that case, it was claimed, on the part of the defendant, that there was a similar agreement, by which Mr. Charlick was to purchase the coal, and the plaintiff was to release the defendant from all liability, but that this fell through in consequence of discovering the badness of the coal; that, therefore, has no legal obligation in the case. Then, after it fell through, the plaintiff gave notice that he would direct the coal to be sold at auction, and that whatever loss might accrue by such sale, he would look to Mr. Law for indemnity; under that view of the case, the coal was put up at auction and sold in the usual way, and brought $7 75 a ton.

Now, if you come to the conclusion, as it respects this item, that the plaintiff is entitled to recover, on the ground that Mr. Law has acquiesced in the mode of purchase and departure from his instructions, by not dissenting within a reasonable time, then, I cannot see that there is any other defence to this item, except it is the question as to the value of the coal, because this private arrangement between Charlick and Cross fell through and amounts to nothing. The question of value is also one of fact for you to settle upon the evidence, involving no principle of law.

If you come to a conclusion in favor of the plaintiff, upon one or both of these items claimed, you will settle the amount you think properly due the plaintiff, deducting the offset, adding interest from the time these coals should have been paid for.

I believe, gentlemen, these are all the instructions I think it necessary to give.

The learned counsel for the defendant has given me a prayer for instructions, but he will understand that any of these which are not contained in what I have said, or which do not accord therewith, are overruled, as not deemed necessary to the case.

And the defendant's counsel hereupon excepted to so much of the charge of the judge as instructed the jury that the plaintiff was entitled to maintain the action in his own name, and asked his honor to charge the jury specifically upon each of the several matters con-

tained in said prayer for instructions, but he refused so to do, and the defendant's counsel excepted to such refusal of his honor to charge the jury in respect to each of the requests so made to him by the defendant.

And the counsel for the defendant hereupon called the attention of his honor the Judge to the testimony of Oliver Charlick, as to his rejection of coal on the defendant's behalf, and asked that the jury be instructed that such rejection of coal by Oliver Charlick, if made as testified to by him, was a rejection by the defendant, his principal, but his honor the Judge refused so to instruct the jury, and defendant's counsel excepted.

And the judge refused to instruct the jury that the rejection by said Charlick of said coal was equivalent to a repudiation of the purchase and refusal thereof by the defendant, to which opinion and decision the defendant's counsel also excepted.

And his honor further instructed the jury, that, in his opinion, the authority of said Charlick, as shown, was not such as to authorize him to repudiate the purchase of the said coal, but that he should leave it to them to find, as a matter of fact, from the evidence, whether the defendant had communicated to Mr. Charlick any specific authority to reject said coal, to which opinion and instructions of his honor the defendant's counsel also excepted.

And the jury, under the instructions aforesaid, retired for deliberation, and returned into court with a verdict for the paintiff of $15,933 79.

And inasmuch as the several matters so produced and given in evidence on the part of the plaintiff and defendant, and by the counsel for the said defendant, George Law, objected and insisted on as a bar to the action aforesaid, appear by the record of the verdict aforesaid, the counsel for the said George Law did then and there propose their aforesaid exceptions to the opinion of the said justice, requested him to put his seal to this bill of exceptions, containing the several matters so produced, and given in evidence on the part of the said George Law as aforesaid, according to the form of the statute in such case made and provided, and thereupon the said justice, at the request of the counsel for the said George Law, did put his seal to this bill of exceptions pursuant to the aforesaid statutes in such case made and provided, on the 20th day of April, in the year of our Lord one thousand eight hundred and fifty-seven.

S. NELSON. [L. S.]

Filed, 15th Nov., 1860.

SUPREME COURT OF THE UNITED STATES.

No. 140.—December Term, 1861.

GEORGE LAW

against

ALEXANDER CROSS.

Brief of Plaintiff in Error.

This action was commenced in the circuit court for the southern district of New York, in October, 1851, by Alexander Cross, an alien, against George Law, upon a declaration in *in debitatus assumpsit* for moneys lent and advanced, laid out and expended; also for goods, wares, and merchandize, sold and delivered; for work, labor, care, and diligence, and upon an accounting. The plea was the general issue, with notice of set-off and payment.

The cause was tried before the Honorable Samuel Nelson in April, 1857, and a verdict rendered for the plaintiff, Cross, for $15,933 79. A bill of exceptions was made by the defendant, and after argument the motion for a new trial was denied, and judgment final was perfected in September, 1860, for $20,051 95, upon which a writ of error is brought. The facts upon which the questions arise, are substantially as follows:

In 1850 Mr. Law established a line of steamers on the Pacific to run from Panama to San Francisco, commonly called "Law's Line of Steamers." As the vessels that were to run on the line proceeded from the Atlantic coast to the route for which they were intended, it became necessary to supply them with coal at Valparaiso, where Mr. Cross was engaged, as partner, in a mercantile house, under the firm of Cross, Hobson & Co., which firm also had a house at San Francisco. This firm was composed of Alexander Cross, William Hooper, David Thomas, Joseph Hobson, and William L. Hobson. (See pp. 28, 65.)

The particular claims presented by the proofs were, first, for a lot of 298½ tons of coal purchased by Cross, Hobson & Co. at Co-

Geo. S. Gideon, printer, 511 Ninth street, Washington.

quimbo, in July, 1850, at $11 50 per ton; second, for 440 tons of coal purchased from the "Duncan" at Valparaiso, as alleged, at $12 per ton; and third, the freight on these two parcels from the places of purchase to San Francisco, by the "Charles V" and "Amalia;" and lastly, duties paid on the coal at San Francisco, and commissions.

The coal at Coquimbo was assumed to be purchased by Cross, Hobson & Co. under Mr. Law's letter to Alexander Cross, of March 12, 1850, (p. 11,) requesting the purchase at Valparaiso for the steamship "Antelope," to arrive there about the 1st of June, "350 tons best coal, and have it ready by the 1st of June." These instructions were repeated in three subseqent letters, two of April 13, and of May 28. (pp. 11, 12.) The purchase of a *lot* at Coquimbo (no quantity specified) was communicated to Mr. Law by Cross, Hobson & Co's. letter of July 15, 1850. (p. 37.)

The purchase of the coal by the Duncan was made by Cross, Hobson & Co. under Mr. Law's instructions in his letter of May 28, 1850: "I want you to purchase me two cargoes of coal afloat, and send it to San Francisco as soon as possible." (p. 13.) This was in response to the letter of 29th March, (p. 63,) advising that coal were there plenty. By their letter of 29th July, 1850, (p. 37,) Cross, Hobson & Co. advised him they had accordingly purchased 500 tons by the Lady Lilford, about sailing to San Francisco, (which has been paid for, see receipt, p. 68,) and 444 tons by the Duncan, to arrive, with the right to cancel if she was not in in sixty days. (p. 38.) The coal per Duncan arrived August 13th, and Cross, Hobson & Co., by their letter of August 27, 1850, advised Mr. Law of the charter of the Charles V, to take the cargo of the Duncan to San Francisco at $16 per ton. By their letter of 7th September, (p. 40,) they advise him that, by authority of Capt. Achley of the "Antelope," they intended shipping the coal at Coquimbo to San Francisco. Of the 444 tons of coal by the Duncan, 350 arrived at San Francisco by the Charles V on the 24th of October, 1850, (pp. 59, 68, 71,) the balance was shipped with the Coquimbo coal by the Amalia, making together 438 tons, and arrived at San Francisco January 8, 1851. (pp. 50, 51.) On the arrival of these lots of coal by the Charles V and Amalia at San Francisco, and being offered there to Mr. Charlick, Mr. Law's general agent, he refused to receive them. (pp. 69, 71, 72.) He, however, subsequently purchased the coal by the Duncan, on his own account, (p. 68,) at $16 per ton, and partially arranged for the Amalia's cargo, but the bargain fell there, and it was sold at auction for a small sum. (p. 44.)

Mr. Cross left Valparaiso by the Antelope early in September, (p. 40,) and arrived at San Francisco about the 26th of October. (p. 69.)

The time required for the transmission of a letter from Valparaiso to New York, and for the return of a reply, as appears from

the correspondence, was from 75 to 90 days. (See Letters, pp. 13, 34, 37, 38.)

POINT I. The court erred in refusing to charge the jury, as requested by the defendants counsel, (page 76,) that the directions to the plaintiff in the business of his firm, (Cross, Hobson & Co.,) was the employment of the firm.

1. In contemplation of law each partner was, as to the business of the firm, the general agent for the whole firm.

An employment of the plaintiff individually in the known business of his firm would have been in violation of his primary duty to his co-partners, and a fraud on the co-partnership; and there is no reason for supposing that it was intended the plaintiff should be employed in his individual capacity, or for presuming that the parties were conniving at any breach of this duty to others.

On the contrary, the presumptions of law were, that the parties intended to act in conformity to the known rights of all the persons concerned, and that any dealing with a partner within the known scope of the partnership was on the co-partnership account; and to covert a co-partnership transaction into the separate affair of a partner, a special agreement to that effect was necessary.

Story on Agency, §§ 37, 124.
3 *Kent's Comm.*, 43, 44.
Willet vs. Chambers, *Cowper*, 814.
Alexander vs. Barker, 2 *Cromp. and Jer.*, 133–9.

II. The court erred in refusing to charge the jury, that the execution of the orders of the defendants as shown to have been followed, or claimed to have been assented to, was by the firm of Cross, Hobson & Co. (See p. 76.)

1. The letter of the defendant of March 12, (p. 10,) April 13, (p. 11,) and second of same date, (p. 12,) constituted the agency under which the plaintiff seeks to recover for the coal purchased at Coquimbo, and that of May 28th, (p. 13,) for the purchase of and freight upon the coal on board the Duncan, which, with incidental charges, comprised the whole of the plaintiff's claim, except for freight on the Coquimbo coal.

The correspondence introduced in evidence explains the intention of the parties as evidenced by these, as well as the other transactions, which have been fully adopted or settled. There was no dispute or conflict as to the facts upon the subject of the agency, as they are all embodied in this correspondence, and they present the question of law, whether the plaintiff or his firm were employed in this agency.

The defendant claims that, notwithstanding the peculiarity in the address of his letters to plaintiff alone, by the legal construction of this correspondence, the firm of Cross, Hobson & Co. were

1. He cannot maintain an action alone for any of the causes of action stated in the declaration, because the interest in any services rendered and moneys expended, as disclosed by the evidence, was in the firm of Cross, Hobson & Co., which was composed of himself and four others.

1 *Ch. Pl.*, 7, 9.
Dob. vs. Halsey, 16 *Joh. R.*
Addison on Cont., 282.
Garrett vs. Handley, 3 *B and C.*, 462.
Alexander vs. Barker, 2 *Cromp. and Jer.*, 138.
Walton vs. Dodson, 3 *Car. and Payne*, 162.

Especially so, as the action is predicated upon *implied* promises, which are raised out of the consideration only by intendment of law, and follow the consideration.

Boggs vs. Curtin, 10 *Serg. and R.*, 211, 213.
Coryton vs. Litheby, 2 *Saund.*, 116, (note 2.)

2. He individually performed no services nor advanced any money for the defendant. p. 51.

3. The proposition, as requested, was strictly correct, and ought to have been stated to the jury, in order to draw their attention to the point in issue.

Jackson vs. Betts, 9 *Cow.*, 225.

IV. The court also erred, in refusing to charge the jury that there was no proof that the plaintiff or his house had paid or agreed to pay any particular sum for the invoice cost of the "Duncan's" cargo, as requested. (9th Request, p. 76.)

There was no legal evidence in the case to show the amount that Cross, Hobson & Co. paid for this cargo. It only appeared that it contained 440 tons, and the evidence given tending only to show the *market value* of coal.

Pages 14, 20, 22, 27, 31.

That it was paid for, to Heathey, Harker & Co., (p. 28,) by the "existing cancelment of bonds." (p. 17.)

No cash payment was made, nor any value stated to those bonds, nor any price or sum proved as that agreed to be paid, or at which it was assumed the payment was (if at all) made.

Cummings vs. Hackley, 8 *John. R.*, 202.
Chit. on Cont., 591.

The mere assertion of Cross, Hobson & Co., in their letters to defendant, (p. 38,) and to his agent, (p. 49,) of the prices at which they had bought, furnished no legal evidence of that fact, or of the value of the bonds with which payment was made.

These letters, remitted by the plaintiff or his house to defendant, being introduced by the plaintiff, were mere statements, constituting *notice* of the acts of agency therein mentioned, but furnished no proof of the matters they asserted, which had to be proved *aliunde*.

There were no replies nor acts of the defendant (with cognizance of any particular fact asserted) which could be construed into an *admission* of the truth of any of those statements.

Richards vs. Ludlum, 9 *Car. and P.*, 221.

V. The court also erred, in refusing to instruct the jury that the rejection of the coal by Mr. Charlick, was a rejection by the defendant, (18th and 21st Requests, p. 79,) and repeated (p. 85.)

And in deciding, (p. 85,) "that the authority of Charlick, as shown, was not such as to authorize him to repudiate the purchase of the coal, but should leave it to them to find as matter of fact from the evidence, whether the defendant communicated to Mr. Charlick any special authority to reject the coal."

The evidence showed that Mr. Charlick was the defendant's *general agent*, (p. 13,) and was so known and treated by the plaintiff and by his firm, in this, as in other transactions.

Pages 39, 42, 49, 50, 51.

As such, the coal was tendered him, and payment demanded, (see Letters, pp. 49, 50, 51,) and payment received for part. (p. 68.)

Being thus the known agent to receive the coal for the defendant, it is difficult to conceive any possible defect in his powers to act fully in the premises, either to receive or reject the coal tendered him for the defendant.

In every case of such a tender, he must necessarily recur to, and act with reference to the obligations of his principal, and must assume the responsibility of definite action one way or the other for his principal.

It needed no proof of any special communication to him from his principal, nor the assigning of any special reasons for his conduct, as his simple acceptance or rejection of the tender would be the act of his principal.

Immediately after the plaintiff's arrival in San Francisco, and to his every application to accept the coal, Mr. Charlick declined to accept it, and assigned the reasons for his refusal, which the defendant has urged on the trial. (pp., 69, 71.)

Such refusal constituted the only breach of contract or duty attempted to be shown. His positive declension to receive the coal, even if it were in direct violation of the private instructions of his principal, was an act for which the defendant as his principal was immediately liable, and precisely the same consequences resulted from that refusal, as if made by the defendant directly or in person.

There was no consideration which warranted the plaintiff in regarding the decision otherwise than as final, or in suspending any such course of action, as that refusal called upon him to adopt, in order to await further advices from the defendant.

He claims in this action the benefit of that tender and refusal as the basis of his claim, yet this decision denies a corresponding privilege to the defendant. This denial of the agent's authority to reject precluded any consideration of the reasonableness of the time within which notice of rejection was given.

VI. The court erred in refusing to charge the jury as requested, (20th Request, page 77,) that the sale to Oliver Charlick, individually, of the cargo of the Charles V, and the payment therefor, was a waiver and abandonment of all legal claim against the defendant, by reason of the purchase of said cargo.

1. There was no contradiction of Mr. Charlick's evidence, nor any attempt to impeach his credibility. He swore that such a sale was made to him, (p. 69,) and produced the bill of sale duly executed in corroboration. (p. 59.) He swore that there was no arrangement whereby he was to pay the freight, and leave the balance to be settled by the defendant. (p. 70.) Also, that the memorandum on the bill of sale of January 14, 1851, was put on by plaintiff sometime afterwards, and in his absence. Notwithstanding this unimpeached statement, the court still left it to the jury to find whether the very contrary was not true. (p. 84.)

1 *Cow. & H. Notes*, 1*st ed.*, 396.

2. The private sale of the coal to another person was a renunciation of the tender, and of the inchoate claims to the fulfilment of a contract, which the defendant repudiated.

3. The acceptance of the $16 per ton upon a disputed claim, with an agreement to rely alone on the decision of the defendant as to the balance, was a *full accord* and satisfaction of any legal claim.

VII. The court erred in refusing to instruct the jury as requested on these several points:

That no portion of the cargo of the Duncan, or of the Coquimbo coal, ever came to the possession of the defendant. (22d Request, p. 77.) That the plaintiff had not proved the payment of any money, by his firm or himself, for the freight of the coal on the Charles V. (23d Request, p. 78.) Or, for the freight of the coal on the Amalia. (24th Request.) Or, for duties on the coal on the Amalia. (25th Request.)

These claims, for anything that appears, still exist as unpaid debts against the consignees, Cross, Hobson & Co., or the plaintiff, and possibly against the defendant.

There could be no recovery on the money counts for any of the amounts referred to, unless they had actually been paid in cash.

Cummings vs. Hackley, 8 *J. R.*, 202.
Boggs vs. Curtin, 10 *Serg. & R.*, 213.
Chit. on Cont., 591.
2 *Saund., Pl. & Ev.*, 678–9.

The court declared (p. 84,) that, any of the points submitted, which were not contained in what he had said to the jury, and which did not accord therewith, were overruled.

VIII. The court also erred in refusing to charge the jury as requested, that there was no count in the plaintiff's declaration, on which he could recover for any engagements entered into on defendant's behalf. (27th Request, p. 78.)

As the plaintiff's claims (if they had any validity against the defendant) were all predicated upon mere assumptions of liability for the defendant by him, or his firm, this direction to the jury ought to have been given.

IX. The court erred in refusing to charge the jury, that there was no proof in the case that plaintiff individually had paid or expended, or agreed to pay or expend, any money for the defendant or defendant's use. (28th Request, p. 78.)

And in instructing the jury, that the plaintiff was, as a matter of law, entitled to maintain the action in his own name. (p. 78; Exception, p. 84.)

See points I, II, III, and authorities cited.

X. The court also erred in allowing the plaintiff's letter of the 24th February, 1851, to be read to the jury. (Obj'n & Exc'n, p. 73.)

It contained *no notice* of any intended or past act which was material to the rights of the parties, and in respect to which a notice could affect their rights. It related to a private arrangement that had been made between the plaintiff and Mr. Charlick, and could only have been introduced for the purpose of affecting the minds of the jury by its assertions as to past transactions relating to the Coquimbo coal, and the inducements of its purchase, &c.

As claimed under point IV, the plaintiff could not make evidence for himself, excepting only so far as *notice or demand* was necessary, and as to the fact of its having been given by his letters written to the defendant, or his agent.

Fowler vs. Stevenson, 1 *John. C.*, 110.
Richards vs. Ludlum, 9 *Car. and P.*, 221.

It cannot, by any analysis, be determined to what extent the jury were influenced by this evidence in giving their verdict.

Osgood vs. Manhattan Co., 3 *Cow.*, 611.
Clark vs. Vorce, 17 *Wend.*, 232.
Whinfield vs. F. and M. Bank, 24 *Wend.*, 419.
Myers vs. Malcolm, 6 *Hill*, 292.
Worrall vs. Parmalee, 1 *Coms.*, 521.
U. S. vs. Breitling, 20 *How.*, 252.

XI. The court also erred in allowing the letter of E. H. Ackley (p. 19) to be read, and in refusing to order it stricken out from the proofs, (p. 56,) and in again presenting it as "persuasive evidence" for the consideration of the jury (p. 81) upon the subject of the necessity of the purchase, and as to whether it was made with a view to meet the "expectations, purposes and objects," or "intentions" of Mr. Law.

Whatever may have been the difficulty on the part of the jury upon the subject of the defendant's "silent acquiescence" in the shipping of the Coquimbo coal to San Francisco, which, of course, involved a ratification of purchase, this principle of a substantial compliance with the original order, or the act being within the expectations or intentions of the defendant, still lay behind to uphold their verdict, charging the defendant with the cost of that coal.

See authorities cited, Point X.

XII. The court also erred in refusing to charge the jury as requested, (5th Request, p. 76,) that the power of the agent was limited to the authority given by the principal.

That the agent was bound to follow the instructions of the principal in every point.

That no motive connected with the interest of the principal, however honestly entertained or wisely adopted, could justify a breach of his instructions.

Evans vs. Root, 3 *Seed.*, 186.
Story on Ag., § 192.
Jackson vs. Betts, 9 *Cow.*, 225.

As these principles lay behind that of silent acquiescence in the purchase and shipment of the Coquimbo coal, and were material in determining whether the original purchase was within the scope of the previous power, or whether the principal could be charged with it, as an act within his "expectations, purposes, and objects," (p. 81,) he was entitled to a distinct statement of them to the jury; and, as they were not contained in nor accorded with anything the judge said to the jury, he substantially overruled them. (p. 84.)

XIII. The court also erred, in instructing the jury—

1. That the proof was all one way; that the contract or agency originally was made between these parties—Cross on the one side, and Mr. Law on the other. (p. 78.)

We claim that the proof was all the other way.

See Points I, II, III.

2. That the freight had been paid on the "Duncan's" cargo. (p. 78.)

The proof was, that the payment by Mr. Charlick for the cargo of the Charles V (the only part of the Duncan's cargo to which the remark could have alluded) was on his individual account, and as the purchase money on the sale to him of that cargo.

Point VI.

3. That the cargo of the Duncan had been purchased at $12 a ton. (p. 79.)

There was no such proof.

See Point IV.

See U. S. vs. Breitling, 20 *How.*, 252.

XIV. The court also erred, in refusing to charge the jury that the plaintiff had no authority to purchase, for the defendant, coal of the character and quality of the Coquimbo coal. (14th Request.)

The defendant's instructions were, to purchase for the Antelope "350 tons best coal." (p. 11.) It was proved that this lot of coal contained only 298½ tons, (p. 15;) that it was a "hard lot;" "entirely worthless for steaming purposes;" "unfit to send a steamer to sea with." "It had been exposed to rain and weather, so that, when you undertook to handle it on the wharf, it crumbled to dust, so that you could not get enough coal out of it to pay for screening." (p. 72.)

To this there was no contradiction. The testimony of Mr. Reilly, that it rained very seldom at Coquimbo, but once or twice a twelvemonth, and seldom exceeding an hour, was not in the least an impeachment of the facts sworn to, as to the quality of the coal. The letters to defendant, relating to this purchase, communicated nothing as to the quantity or quality of this coal. (Fol. 191, 194.)

His silence, therefore, imported no acquiescence in any such departure from his instructions, and in no way interfered with his right to reject the coal tendered by the agent as a compliance with them. The entire disregard of his instructions in these particulars justified his rejection of the coal when tendered at San Francisco.

Story on Cont., *p.* 161.

Champlin vs. Rowley, 18 *Wend.*, 187.

XV. The court erred in not deciding that the defendant's letter of the 28th of May, 1850, requesting the purchase of two cargoes of coal "*afloat*," did not authorize the purchase of the cargo of the Duncan to arrive in sixty days. (8th Request, p. 76.)

The utmost latitude given to that term by plaintiff's witness, Riley, (p. 76,) in contradiction of Charlick, (p. 69,) was, that it applied to cargoes afloat in neighboring ports. His instructions to purchase was in consequence of Cross, Hobson & Co.'s information that coals were plenty at Valparaiso. (Letter, p. 63.)

XVI. The judgment should be reversed, and a new trial ordered.

S. D. LAW,
R. H. GILLET,
Of Counsel for Plaintiff in Error.

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SUPREME COURT.

OF THE UNITED STATES.

ALEXANDER CROSS, Plaintiff,
Def't in Error,
agst.
GEORGE LAW, Defendant,
Pl'ff in Error.

Brief of Defendant. in Error.

This action was commenced in the Circuit Court for the Southern District of New-York, in October, 1851, on the common counts for money lent and advanced, for money paid out and expended, work and labor and commissions in the purchase and shipment of cargoes of coals, on the order of the defendant.

The defendant pleaded the general issue, with notice of set-off and of payment.

The cause was tried before the Honorable Samuel Nelson, in April, 1857, and a verdict rendered for the plaintiff for $15,933.79. A Bill of Exceptions was made by the defendant, containing the exceptions taken to the rulings on the trial; and after argument thereof, in the Circuit Court, judgment was given for the plaintiff for the amount of the verdict and $4,118.16 for costs and interest, in all $20,051.95, in September, A.D. 1860. (*Record, pp.* 6 *to* 9.) On this judgment the defendant below has brought his writ of error.

The facts detailed in the Bill of Exceptions, present the following case:

I. In the year 1850, Mr. Law, the defendant, set on foot a line of Steamers on the Pacific, to ply between Panama and San Francisco, to consist of the Isthmus, Republic, Columbus and Antelope. They left New-York to take their places in the contemplated line, during the early months of 1850.

For the purposes of this line the defendant needed to provide for coals at Valparaiso, on the passages from here into the Pacific, and at Panama and San Francisco, for the current uses of the line.
(*Record, p.* 9, *Letter Jan.* 12; *p.* 10, *Letter March* 12.)

II. The plaintiff belonged to a house in trade at Valparaiso, under the name of Cross, Hobson & Co., consisting of Alexander Cross.

William Hooper, David Thomas, Joseph Hobson, and William L. Hobson, and at San Francisco, under the name of Cross & Co.

(*Record, p.* 48, *Garcia*, 5 *Cross in.*)

The plaintiff was at New-York in January, 1850, about proceeding to Valparaiso, where he resided. He continued there during the transactions at that place mentioned in the Bill of Exceptions; and proceeded to San Francisco in the fall of the year, and arrived there in October.

(*Record, p.* 9. *Letter Jan.* 12; *p.* 69 *Charlick.*)

III. The defendant gave orders for sundry purchases of coal. Those which are directly involved in this case are two—one to meet the wants of the steamer, Antelope; the other for two cargoes to be sent to San Francisco, to meet the general purposes of his line. The former order will be first treated.

IV. The Antelope order.

1. The Antelope was expected to leave New-York, April 1st, and to arrive at Valparaiso on her way to San Francisco, by 1st June.

a. On the 12th March Mr. Law, in a letter to the plaintiff, announcing the above expectation, wrote, "You will purchase for her at "Valparaiso, 350 tons best coal and have it ready by the 1st of June. "You will please draw on me for this coal."

(*Record, p.* 10, *Letter of* 12th *March.*)

b. Again, on the 13th April, referring to this letter (printed as dated March 1st, but by reference to that of March 12th, it is evidently the latter,) he recites the order "to engage 450 tons of coal for the steam-"ship Republic, before she arrives there; also 350 tons of coal for "the steamship, Antelope," * * "authorising you to draw on me "here for the coals thus ordered." Adding, "The Antelope will ar-"rive about 25th June. (*Letter* 13*th April, pp.* 11, 12.)

c. In another letter of the same date, by the steamer, Republic, addressed to the plaintiff, the defendant says, "The steamer Antelope, "will be at Valparaiso about three weeks after the Republic. The "Antelope will be consigned to you at Valparaiso. She will require "350 tons of coal, which you will please provide for her and draw on "me for the amount. Get the best quality of Welsh coal if you can. "If Welsh coals are scarce, or too high in price, then get the next best "coal that you can." (*Letter April* 13*th, p.* 12.)

2. On the 18th May, the Antelope sailed from New-York, (*p.* 56 *Hackley depos,*") which Mr. Law announced to the plaintiff in a letter to him, saying, "The steamer Antelope, left here on the 18th instant. "She is consigned to you and will probably arrive at Valparaiso the "18th July, at furthest." * * "The Antelope will take 350 tons of "coal at Valparaiso, of the best quality." "You will give her all the "despatch possible." (*Letter* 28*th May, p.* 13.)

V. Execution of the order.

a. On the 1st July, the plaintiff's firm at Valparaiso, wrote to the defendant, "We have made inquiries as to coal in Coquimbo, in

"the event of our having bad weather when the Antelope comes, "which in our winter season is so common." (*Letter 30th June, 1st July, p.* 36.)

b. And July 15th, "Coal is quite scarce, and we are happy to advise "having secured a lot for the Antelope to be put on board in the fine "port of Comquimbo (a day's sail to the North;) where she will be quickly dispatched; say, at $11.50 on board. (*Letter 15th July, p.* 37.)

c. Again, 29th July, acknowledging letter of 28th May received 25th July, they write to the defendant, "We note the sailing of the "Antelope on the 18th May, from New-York, &c. Her coals are "provided at Coquimbo, at $11.50 as we advised." (*Letter 15th July, p.* 37.)

c. Again, 29th July, acknowledging letter of 28th May, received 25th July, they write to the defendant, "We note the sailing of the An- "telope on 18th May, from New-York, &c. Her coals are provided at "Coquimbo, at $11.50, as we advised. (*Letter 29th July, p.* 37, 38.)

VI. The purchase of the coal was made in July, at this price, at Valparaiso, 300 tons of good Welsh steam coal from Liverpool, at $11.50 per ton at Coquimbo, for the supply of the Antelope, at that time daily expected at Valparaiso.

There were no other cargoes afloat at Valparaiso at the time. The coal was kept at Coquimbo for the Antelope.

Coquimbo was in the route from Valparaiso, and a port more sheltered at that season.

[*Byerbach*, 3 *Int.*, *p.* 29, 30. 2 *Cross*, *p.* 33. *Williams*, 4 *int. p.* 15, 16. 2 *and* 3 *Cross*, *p.* 18. *Harher*, 4 *int. p.* 21.]

VII. The Antelope did not arrive until so late as August 30, at Valparaiso, having sustained damages needing to be repaired there. As these could not be made at Coquimbo, but could be at Valparaiso, Hackley, the master of the Antelope, to save time by loading the coals, while the repairs were in progress, requested coals to be purchased at an advanced price. He was so supplied and the amount paid for; and he recommended the coals at Coquimbo, to be sent on to San Francisco.

[*Hackley*, *p.* 56 *to* 58; *his letter August* 30, *p.* 19. *Ryerbach*, *p.* 27, 28. 2 *Inter.*]

2. On the 7th September, Cross, Hobson & Co., inform the defendant of what had thus happened, enclosing also the latter of Capt. Hackley of the Antelope, and of their intention to ship these coals to San Francisco, by the first opportunity. (*Letter 7th Sept., p.* 40.)

3. They were shipped for San Francisco in September, and subsequently arrived there; the freight to San Francisco was $17 per ton. [*See Charter p.* 26.]

VIII. The order for the TWO CARGOES.

1. This was in the defendants letter of May 28 (p. 13), as follows:

"I want you to purchase me two cargoes of coal afloat, and send it to "San Francisco as soon as possible, consign it to me. You can draw "on me for the price of the coal at Valparaiso, and the balance paya- "ble at San Francisco on delivery there" (*p* 13).

(The balance would be, the freight to San Francisco, commissions and expenses).

2. This order was received at Valparaiso, 25 July: and on the 29th Cross, Hobson & Co. informed the plaintiff: "Your order for two car- "goes of coal for San Francisco, we have filled as follows:

"500 tons per LADY LILFORD, Br. bark, to sail in 12 @ 15 days, paya- "ble after delivery on board in San Francisco, alongside steamer's "lighters, and free of wharfage to vessel, or duty on coals to sellers, "thirty running lay days for delivery, and ten more on demurrage, "@ $25 per day.

"444 tons per DUNCAN to arrive, now eighty-five days out, at $12 on "board here. Freight can be got from $16 to $18 per ton—all best "steam coals; tons 2,240 pounds. If she be not in in sixty days we "will have the option to cancel the purchase." (*Letter p.* 38.)

3. On the 8th August, Cross, Hobson & Co. wrote from Valpa- raiso: "The coals for San Francisco, per L. LILFORD, should start in "a week however. This vessel cost nearly $16 on board, of but in- "different quality," &c. (*Letter p.* 39)

4. The coals were thus purchased in Valparaiso, by Cross, Hobson & Co. in July, and paid for by them, and sent on to San Francisco. (*Williams* 2 *int., p.* 14. 1 *Cross.*, 617. *Harker.* 2 *int., p.* 20. *Byer- bach.* 2 *int., p.* 27.)

These coals were all good steam coal. (*Byerbach p.* 23, 7 *inter.*)

IX. *a* On the 20th August, the LADY LILFORD took on her cargo to San Francisco, arrived there in November, 1850, and was paid for there at the rate of $30 per ton, for cost and freight to Valparaiso. (*Letter* 27 *Aug., p.* 39. *Bill of Parcels, p.* 69.)

(As this cargo was accepted and paid for, it is out of the case as to the recovery. *Charge p.* 79.)

X. The DUNCAN's cargo was sent on from Valparaiso by trans-ship- ment in two other vessels, the master of the Duncan not being willing to contract to carry them on in his ship. (*Byerbach p.* 30, 5 *int*)

1. There were 444 tons of the Duncan's Cargo, and 300 tons bought for the Antelope lying at Coquimbo, to be sent forward to San Fran- cisco. For their transportation two vessels were chartered by Cross, Hobson & Co. at Valparaiso, the CHARLES V. and the AMALIA, at the rate of $16 per ton in the Charles V., and $17 in the Amalia; which latter was to touch at Coquimbo for the coals there. (*Charter Charles V., p.* 24; *of Amalia, p.* 26.)

2. The CHARLES V. sailed Sept. 11, (p. 27,) with her 350 tons coal, and arrived at San Francisco in November, and it was there tendered

to Oliver Coarlick, Mr. Law's agent there, by the plaintiff, (who had gone to San Francisco) and especially by letter of December 23. Charlick having made hesitation, on the subject, before the coal arrived or he had seen the same, the plaintiff proposed that he should receive the coal, pay $16 per ton and leave the balance to the decision of the defendant. Charlick denies that it was any other than a simple sale to him at that rate, after his refusal to take it as purchased according to Law's order.

(*Garcia* 3 *int. p.* 42. *Letter Dec.* 23, *p.* 50. *Bill parcels Dec.* 23, *p.* 68. *Memorandum on it Jan.* 14, *p.* 70. *Letter Oct* 28, *p.* 49, *Oct.* 29, *p.* 69, *Charlock refusal*, *p.* 69.)

The plaintiff claimed the price, and freight and commissions, crediting the $16 per ton, less duties.

3. The AMALIA took the residue of the Duncan's cargo 444--350, 94 tons at Valparaiso, whence she sailed September 26, (*p.* 27) for Coquimbo, to take the 300 tons lying there, with which she proceeded to San Francisco and arrived there about a month after the Charles V. (*Garcia*, 2 *int. p.* 41) say in January, 1851.

a. The correspondence of October 28 and Oct. 29, between Cross and Charlick shows that the latter had determined not to accept the coals of the Duncan nor those from Coquimbo.

Letters Oct. 28, *p.* 49, *Oct.* 29, *p.* 69.

On her arrival, Cross and Charlick attempted an arrangement in relation to this cargo, similar to that of the Charles V; paying $17 per ton, (the price of freight) (*p.* 73.) after Charlick had declined to receive it for Mr Law, (*p.* 71.)

b. Charlick on the 4th February suggested the sale of it to a Steam Boat Co., at San Francisco at $17 per ton, (*p.* 74.)

He then pretended that the coal was of bad quality. (*p.* 73, *Charlick note.*)

Thereupon Cross, the lay days of the Amalia having expired, again pressed Charlick to receive it. (*Cross' notes Feb.* 24, *p.* 73, *Feb.* 28 *p.* 51.) In reply Charlick finally refused to take this cargo. (*Charlick evidence and note*, 1 *March p.* 74.) It was therefore sold at auction to one Bessey, (*Poulterer* 9 *Int. p.* 52.) and came eventually by a pretended sub sale, to Charlick's hands (*Garcia* 10 *int.* 13 int. *p.* 45, *Charlick*, *p.* 72.)

c. As to the value of the coals; Charlick attempted to prove those from Coquimbo to be worthless. He says, (*p.* 71) 'sixty or eighty 'tons on top of the Amalia's coal was fair coal, English coal, the rest 'was a pretty hard lot; it was entirely worthless for steaming pur-'poses; unfit to send a steamer to sea with; the coal was bituminous 'coal, it had been exposed to rain and weather, &c., &c. (*p.* 72.) I 'proceeded to unload until I got down to the Coquimbo coal and 'found it so bad and worthless that I protested against taking it.'

But the coal from Coquimbo was taken in there *after* the vessel had taken the 94 tons from the Duncan; which therefore was at the bottom of the ship, and the coal first delivered, and which he allows was

'fair coal' was that last taken in at Coquimbo. And this pretence is also inconsistent with his recommendation of it on the 4th February, (*p.* 74) and his subsequent purchase of it from Bessey, and his sale afterwards. (*p.* 73.)

And the question of the value of the Coal, relating only to this coal was submitted to the Jury. (*Charge p.* 84.)

XI. The claim of the plaintiff, therefore, was for the price of the Duncan's cargo, of the cargo bought for the Antelope, for the Charter money, duties, and expenses, and his commissions, crediting the amount realized from the two sales at San Francisco, and for interest on the balance.

XII. An objection was made on the trial that the action could not be brought in the name of Cross alone. The facts presenting the question are these.

a. The letter of Law, January 12, 1850, originally engaging Cross at New-York, is addressed to him individually, (*p.* 12.)

b. His letter of March 12, directing the purchase for the Antelope, is addressed to the plaintiff individually, "*You* will purchase for her, "&c. *you* will please draw on me for this coal." (*p.* 11.)

c. His letter of April 13, speaking of the coals to be purchased at Valparaiso is addressed to the plaintiff individually, 'authorising *you* "to draw on the here for the coals thus ordered." (*p.* 11.)

d. Again, his letter of same date, per Republic, to the plaintiff individually, expresses "The Antelope will be consigned to *you* at "Valparaiso. She will require 350 tons of coal, which you will please "please provide for her and draw on me for the amount." (*p.* 12.)

e. His letter of instructions to Capt. Hackley of the Antelope, expresses, "At Rio you will consign the vessel to Maxwell, Wright & "Co.; at Rio to *Alexander Cross.* You will draw bills on me in their "favour for the coals and expenses required for the ship at either of "those places." (*p.* 59.)

f. His letter of May 28, addressed to the plaintiff individually, expresses, "The (the Antelope) is consigned to *you.*"

"I want *you* to purchase me two cargoes, &c. Consign it to your house there for me. *You* can draw on me for the price, &c. (*p.* 13.)

g. And January 15, 1861, (by error printed 1860,) (see p. 47, 20 int.) Cross individually writes to Law, "Your orders were directed "to me and I am therefore responsible to Cross, Hobson & Co., who "executed them with their money." (*p.* 51.)

h. The letters introduced by the defendant addressed to him by the plaintiff are signed in the plaintiff's individual name, in relation to the concerns between them; see *letters Feb.* 8, 1850, *p.* 61; *February* 26, 1850, *p.* 62; *March* 29, 1850, *p.* 63; *April* 23, 1850, *p* 63; *May* 27, 1850, *p.* 65..

i. No letter is produced from Mr. Law, addressed to the houses of which the plaintiff was co-partner during the whole period.

j. The time to communicate between New-York and San Francisco and back, was 75 to 80 days. (*Charlick, p.* 70.)

Letters from Valparaiso of 23d April, were received at New-York 24th May. (*Letter of 28th May, p.* 13.) and letters from New-York dated 28th May, to Valparaiso, were received there 25th July. (*Letter 29th July, p.* 37.)

k. No letters were written by Law in reply to the various advices of the purchases of the coals and of the shipment of them to San Francisco.

XIII. The Judge in his charge, held,

1. That action was properly brought by the plaintiff individually for the disbursments and services incurred in the transaction. *Charge, p.* 78.

2. That whether the orders of the defendant were exactly conformed to or not, yet if the principal, (Mr. Law,) was informed what his agent had done under his instructions in the way of fulfilling them, and saw that he had on his own judgment departed from those instructions, and he, Law, did not mean to be bound by them, then as matter of law, the principal is bound within reasonable time to advise his agent that he must not consider him bound by his acts; and that an omission to take those steps will conclude the principal from disputing his agent's authority. Whether there was a reasonable time is a question of fact for the Jury. (*Charge p.* 82, *p.* 83.)

3. The pretended agreement by Charlick of a sale to him at San Francisco, concluding the transaction, was also left as a fact to the Jury. (*Charge, p.* 84.)

4. The value of the coal, disputed by Charlick's evidence, was left as a fact for the Jury. (*Charge, p* 84.)

5. The rejection of the coal by Charlick was not equivalent to a rejection by Law.

But he left it to the Jury to find, whether Law had communicated to Charlick any specific authority to reject the coal. (*Charge. p.* 85.)

POINTS.

First.—The purchases of the *Duncan's* coals, and of *those at Coquimbo*, and the shipment of them to San Francisco, having been made on the order of the defendant, and on his account, and the circumstances of such purchases and shipment having been communicated to him, by or on behalf of the plaintiff, the defendant in law adopted them by his acquiescence.

a. 1. The *Antelope purchase* was communicated by letters of 30th June and 15th July; due in New-York in thirty-one days, say 16th August. No reply was ever made.

2. The *Duncan purchase* was communicated by letter of July 29th, due in New York by 1st September. No reply was ever made.

3. The *transhipment* of the Duncan's cargo, and of the Coquimbo coals, was communicated by letters of August 27, and September 7, enclosing Capt. Hackley's letter—due in New York October 10. No reply was ever made.

4. If any reply had been made, it would have reached Valparaiso as early as the middle of November, as to all the purchases, and as early as the middle of December as to the transhipment. The reply would have reached San Francisco at as early, if not earlier dates.

Therefore it is clear that no reply was ever made repudiating either these purchases or the transhipments.

b. Charlich, unless authorized by Law could not repudiate either of these transactions.

1. His agency, described by himself is, that he had charge of the vessels in the Pacific, and all other vessels having business with these four ships. *p.* 67. The orders were from Mr. Law at New-York, the advices were to Mr. Law there. Without communication from the principal, Charlick could not act upon advices not sent to him.

2. Nor was the purchasing of coal by order or with the sanction of the principal at New-York, within the functions of an agent having charge of the vessels in the Pacific.

3. Charlick had advices of the orders to purchase in October (*Letter 29th October, p.* 69), and had received advices as late as January 11 (*p.* 72); yet although it was left to the jury (*charge p.* 85,) he could show no authority to reject the coal, general or particular.

Charlick shows no authority to purchase and reject what other agents had purchased in direct communication with the principal. He shows no power to adopt or reject any such purchases.

4. An agent not expressly authorized cannot make a stoppage in transitu.—

Bird vs. *Brown*, 4 Excheq. Rep. 786.

much less can he repudiate a contract made for his principal, which the latter does not decline.

5. By force of the fiduciary relation between principal and agent, the purchases of the latter, made under the order of the principal, and in intended conformity thereto, vest in the principal, even if not made in strict conformity with his orders. The agent cannot, against the principal, claim them. By reciprocity of justice, the principal must, when informed, reject within a reasonable time, or be deemed to adopt by acquescence.

Prince vs. *Clark*, 1 Barn. & Cress. 186.
Cairnes vs. *Bleecker*, 12 John. R., 300.

"It is a salutary rule in relation to agencies, that when "the principal is informed of what has been done, he must "dissent and give notice in a reasonable time, or otherwise "his assent to what has been done shall be presumed."

Brigham vs. *Peters*, 1 Gray (Mass.) Rep., 147,

citing the last case and the above language, expresses: "The "rule is a very stringent one upon the principal in such cases, "where with full knowledge of the acts of the agent, he re-"ceives a benefit from them and fails to repudiate the acts.

Hoyt vs. *Thompson*, 19 N. Y. Reports (Smith), at p. 218.

"A corporation may, like an individual ratify the acts of "its agents done in exess of their authority, and such ratifi-"cation may in many cases be inferred from an informal ac-"quescence in and approval of those acts."

Com. Bk. of Buffalo vs. *Warren*, 15 N. Y. (Smith) Rep. 579.
Armstrong vs. *Gilchrist*, 2 Johns. Cas., 430—note, 2 Kent. Comm., 616.
1 *Emerigon*, 145.
Paley on Agency, 17, note—3 Amer. Ed.

6. The judge, instead of charging in favor of the plaintiff, as matter of law, left the question of acquescence fairly to the jury. *Charge p.* 84.

Second.—The letter of Hackley, the master of the *Antelope* (p. 19), was properly in evidence.

1. It was part of the history of the transaction, and had a bearing on the good faith and proper conduct of the plaintiff.

2. A copy was enclosed to Law on September 7 (*p.* 40) and is relevant as a notice to the defendant of what had been done, and of the object in doing it. It formed part of the evidence to show what was ratified.

Third.—The transactions between Charlick and the plaintiff, at San Francisco, as to the cargoes of the *Charles V. and Amalia*, constitute no defence.

1. It was left to the jury as a fact, whether the sale of the *Charles V's* cargo or the agreement for a sale of the *Amalia's* cargo, by which these cargoes had been arranged, was one by which the claim against the defendant was abandoned. *Charge p.* 84. But this was more favorable to the defendant than was the law: for

2. After a rejection of the coal on behalf of Law, the plaintiff had a right to sell and apply the proceeds on account in reimbursement, without prejudice to his claim for the balance.

3. Charlick says, that in this he acted for himself, and not for Law: There could have therefore been no accord and satisfaction on these claims; for that imports an agreement between the parties to the claim, and cannot be made by an agreement between either party and a stranger.

Fourth.—The agency was expressly formed by the letters of Mr. Law, with Mr. Cross, personally, although with knowledge by Mr. Law of his firm, and with the intent to deal with him as sole party in all accounts and settlements.

a. 1. Every communication by Mr. Law is with Mr. Cross individually.

2. His letter of instructions to the master of the *Antelope*, directs a consignment of the vessel to Alexander Cross, not to his firm.

3. The letter of Cross to Law in January, 1851, when there could be no difference to Cross, whether the claim was made in his name individually or in that of his firm shewed that he so understood it: and this was not contradicted by Mr. Law.

b. 4. The orders for the purchases were also letters of credit to draw for the price, enabling Mr. Cross if he chose to negotiate bills, on faith of the letters, to pay for the coals, &c. But no one but Cross could draw under these credits.

Birchhead vs. *Brown*, 5 Hill, N. Y. R., 635.
S. C. 2 Denio. R. 375.
Grant vs. *Naylor*, 4 Cranch R., 224.

5. By this mode of giving orders the person ordered to purchase was required to make the draft, and Mr. Law rendered indispensible the personal action of Mr. Cross in every transaction.

6. Mr. Law also avoided all derangement to his orders and plans from possible changes in the firms at Valparaiso and San Francisco and ensured their execution so long as Mr. Cross was in them.

7. Both from the express terms of the letters and the obvious consequences of an adherence to the agency so expressly conferred, the transaction must be held one between Mr. Law and Mr. Cross.

c. 8. Where the express agreement is to treat one partner individually as the contracting party, he may sustain any action, whether the performance was by the funds in which he was interested jointly or solely.

Skinner vs. *Stocks*, 4 Barn. & Ald. 437.
Lloyd vs. *Archbowle*, 2 Taunt R. 234.
Mawman vs. *Gillette*, idem. note.
Leech vs. *Shaftse*, 2 Esh. R. 468.
Ross vs. *Decey*, idem. note.

9. This could work no prejudice to Mr. Law: The demand must be made on him through Cross individually as the press party to the contract of agency. Mr. Law could set off any demands on his part, either against Cross individually or against his firm.

d. 10. The plaintiff having a right to bring the action individually through the express terms of Mr. Law's letters and his own, he is not bound to test the question of bringing the action in name of his firm by reason of Mr. Law's acquiescence in the transaction of the business by the firm, even if he may have the election to do so.

11. This objection to the form of the suit is a mere technicality and not to be favored.